

## Chapter 10

# The Real Estate Owner's Perspective: Opportunities and Risks\*

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### **The Real Estate Owner's Perspective: Opportunities and Risks**

LEED version 3.0 is a good example of how the USGBC is trying to morph with the times and adapt to the ever-changing sustainable building world. But with changes to any ingrained system, there are, and may be, multiple related issues resulting from the change. This article discusses how the U.S. Green Building Council ("USGBC") Leadership in Energy and Environmental Design ("LEED") v 3.0 differs from v 2.0 and how those changes may impact a real estate owner's exposure to a myriad of risks and liabilities. In this discussion, we will also explore transactional and regulatory considerations and how the principles of the new version must be incorporated into the numerous contracts entered into relating to a sustainable building.

So what is different about LEED Version 3.0? LEED Version 3 incorporates LEED 2009, LEED Online Version 3 ("LEED Online"), and modifies the LEED certification process and with fundamental changes made to LEED Version 2.0. Yet with the new changes made by USGBC, those project owners with buildings certified under previous versions of the rating system are now in limbo when it comes to recertification. Although existing buildings are not required to switch to LEED 2009 immediately, recertification may mandate compliance to the latest version in the future. Due to this, property owners with existing certified buildings may have potential issues and liability not envisioned by themselves or USGBC and no one knows exactly how to prepare for the future. But before delving into the legal/risk analysis of the differences between LEED v 3.0 and prior versions, we need to understand Version 3.0 and where we are today.

With LEED 2009, the rating systems for Core & Shell,

Commercial Interiors, Schools, New Construction and Existing Buildings: Operations & Maintenance were all morphed into new systems (USGBC has not yet revamped the rating systems for Homes or Neighborhood development and is in the midst of piloting LEED for Retail). And in this morphing process, the major *enhancements* include what USGBC calls “harmonization, regionalization and credit weightings”.

- **Harmonization:** Credits and prerequisites from all LEED commercial and institutional rating systems were made consistent with each other. USGBC calls this “drawing on their most effective common denominators, so that credits and prerequisites are consistent across all LEED 2009 rating systems” and into this was further incorporated credit interpretation rulings (“CIR”) which were clarified where needed.

- **Regionalization:** The Green Building Certification Institute (USGBC’s certification administrator, “GBCI”) has prioritized six credits towards certification based on a project’s location (“Regional Credits”), primarily due to “regionally specific environmental issues”. A project can now be awarded up to four extra points (one point per credit) for earning priority credits.

- **Credit Weightings:** The last of the major changes that came with LEED 2009 includes a re-weighting of LEED credits depending on their ability to impact different “environmental and human health concerns. With revised credit weightings, LEED now awards more points for strategies that will have greater positive impacts on what matters most — energy efficiency and CO2 reductions.” Here there are thirteen environmental impact categories (“EIC”) which are topped by indoor environmental quality, resource depletion, water intake and climate change. A given credit is now prioritized into EIC’s and assigned a value based on how it promotes the environment or similarly, how it may mitigate a negative impact to the environment. The most value is given to those credits that have “the highest potential for making the biggest change”. The old Version 2.0 credits still exist, but just worth different amounts, so now, LEED 2009 operates on a uniform 100-point scale. To simplify matters and as an illustration, LEED for New Construction 2009 has increased the point value of the credit(s) relating to the

proximity of a building to public transportation. Why? Because when a building is closer to public transportation it permits building occupants to take advantage of alternative transportation methods which in turn have great impact(s) on ozone and fossil fuel depletion, acidification, land use, smog formation, ecotoxicity and other negative impacts from single-occupant vehicle use (all of which also affects a building's carbon footprint associated with occupant transportation to and from the building). So, for example where under LEED Version 2.0 SSc4.1 awarded only 1 point, under LEED 2009, a project can now obtain under this category as many as 6 points. See the chart below for an example of weighting changes for LEED — NC.

The Registration Agreement below is required of all applicants in the LEED rating system. The following chart also compares LEED NC 2.2 with LEED 2009 NC to give you an idea of how the weighting system changed. USGBC has become more sophisticated in its approach, but with that sophistication has additional requirements post-certification with which property owners will have to deal.

Green Building Certification Institute

**LEED® Project Registration Agreement**

The purpose of this document is to ensure that the persons registering this Project have reviewed all aspects of the LEED Certification process and are fully aware of and agree to all of the following terms, conditions and provisions.

**AGREEMENT**

**1. SCOPE OF BINDING AGREEMENT**

**1.1. BY ACCEPTING THIS AGREEMENT YOU ACKNOWLEDGE THAT YOU ARE FULLY AWARE OF AND AGREE TO ALL OF THE FOLLOWING TERMS, CONDITIONS, AND PROVISIONS.**

1.2. This LEED Project Registration Agreement, hereafter referred to as the "Agreement," is entered into by and between you and GBCI, each of which are defined below, and constitutes a binding agreement between you and us.

1.3. This Agreement consists of the terms, conditions,

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and provisions expressly set forth herein as well as the following documents which are incorporated by reference herein in their entirety: (i) the LEED Certification Policy Manual, linked hereto; (ii) the LEED Certification Application, that you submit to us and which we accept; (iii) the applicable LEED Green Building Rating System for your selected Project type as identified below; and (iv) the applicable LEED Green Building Rating System Reference Guide for your selected Project type as identified below; all of which are intended to be complementary and interpreted in harmony so as to avoid conflict.

1.4. In the event of any conflict or discrepancy between the terms, conditions, or provisions, of the documents identified in the preceding Section 1.3 of this Agreement, they shall take precedence in the following order: the terms, conditions, and provisions of this Agreement; followed by the LEED Certification Policy Manual, followed by the LEED Certification Application, followed by the applicable LEED Green Building Rating System for your selected Project type as identified below, followed by the applicable LEED Green Building Rating System Reference Guide for your selected Project type as identified below.

1.5. This Agreement constitutes a fully integrated agreement that supersedes any and all prior agreements between you and us concerning the LEED Certification process as it applies to your Project.

1.6. If you are unable or unwilling to accept this Agreement your sole choice is to withhold your LEED Certification Application and/or terminate the registration for your Project. We will not refund any fees paid by you to us should you determine to withhold your LEED Certification Application and/or terminate the registration for your Project.

1.7. You agree that any obligations we are required to undertake under this Agreement may be assigned or delegated by us in our sole reasonable discretion.

## **2. DEFINITIONS**

2.1. As used herein, the words “we,” “us,” and “our” refer to the Green Building Certification Institute (also herein referred to as “GBCI”), a non-profit corporation of

the District of Columbia with an address of 2101 L Street NW, Suite 650, Washington D.C. 20037, and all of its respective employees, agents, officers, directors, assigns and successors in interest.

2.2. As used herein, the words “you,” “your,” and “yourself” refer to the person who registers a Project with LEED Online as well as all persons who participate in Project submittals, including the Project Owner’s duly authorized agents and employees.

2.3. As used herein, the word “Owner” refers to the entity or person that possesses the exclusive right to hold, use, benefit from, insure, enjoy, convey, transfer, and otherwise dispose of the Project that has been registered with us through the use of LEED Online.

2.4. As used herein, the phrase “registration” refers to the process through which a Project is established in LEED Online. This process includes the completion and submission of all applicable Registration Forms within LEED Online, as well as the remittance of all applicable fees to us.

2.5. As used herein, the phrase “Registration Forms” refers to the electronic data submission templates available within LEED Online through which basic Project and Owner information is provided to us for the purposes of completing registration and establishing a Project.

2.6. As used herein, the phrase “Project” refers to all real or physical property within the LEED Project Boundary, including the building(s), space(s), structure(s), land, fixtures, etc., which collectively are registered in LEED Online as a single entry.

2.7. As used herein, the phrase “your Project” refers to the Project that is the subject of the Registration Forms you hereby submit to us.

2.8. As used herein, the phrase “LEED Project Boundary” refers to the line drawn on submitted documentation indicating the limits of the real property which collectively is being registered with us as your Project.

2.9. As used herein, the phrase “LEED Certification” refers to GBCI’s determination that a Project is in compliance with all minimum program requirements, has satisfied all prerequisites, and accumulated the minimum number of points to achieve a particular level of

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LEED Certification, such as Certified, Silver, Gold or Platinum as outlined in the LEED Green Building Rating System under which it is registered.

2.10. As used herein, the phrase "LEED Certification process" refers to the steps that take place from and including the submission of a LEED Certification Application to us through and including our final action on such application.

2.11. As used herein, the phrase "LEED Certification Application" refers cumulatively to the electronic forms available via LEED Online that allow you to submit documentation and other information necessary to demonstrate that your Project is in compliance with all stated LEED Green Building Rating System requirements including minimum program requirements, prerequisites, and credits. Access to the LEED Certification Application is available to the Project Administrator upon the completion of registration.

2.12. As used herein, the phrase "Project Administrator" refers to a role assigned to a particular person associated with your Project within LEED Online. This role carries with it unique permissions and responsibilities with regards to the administration of the LEED Certification Application. LEED Online will initially assign this role to the person who completes the registration for your Project. This role may be changed at anytime.

2.13. As used herein, the phrase "LEED Online" refers to the LEED Online Version 3 information submittal tool located at URL <https://www.leedonline.com> designed to facilitate the submission of information and documentation through the use of electronic forms as is necessary to complete registration and the LEED Certification process.

2.14. As used herein, the phrase "LEED Green Building Rating System" refers to one of a series of rating systems under which you may register your Project. Each LEED Green Building Rating System is comprised of a unique series of minimum program requirements, prerequisites, and credits that must be satisfied in order to achieve LEED Certification. The execution of this Agreement will allow you to register for one of the fol-

lowing LEED Green Building Rating Systems currently offered by us as listed below and linked hereto:

**LEED 2009 for New Construction and Major Renovations Rating System**

**LEED 2009 for Core & Shell Development Rating System**

**LEED 2009 for Schools New Construction and Major Renovations Rating System**

**LEED 2009 for Existing Buildings: Operations and Maintenance Rating System**

**LEED 2009 for Commercial Interiors Rating System**

2.15. As used herein, the phrase “prerequisite” means a mandatory Project characteristic, measurement, quality, value or function as identified within a particular LEED Green Building Rating System.

2.16. As used herein, the phrase “credit” means a non-mandatory Project characteristic, measurement, quality, value or function as identified within a particular LEED Green Building Rating System. Each credit is assigned a particular quantity of points.

2.17. As used herein, the phrase “minimum program requirement” refers to a mandatory Project characteristic, measurement, quality, value or function as identified within a particular LEED Green Building Rating System.

2.18. As used herein, the phrase “LEED Green Building Rating System Reference Guide” refers to one of a series of three publications, each pertaining to a particular set of LEED Green Building Rating Systems. These publications provide supplementary information on program requirements including all prerequisites and credits. These publications are available for purchase from USGBC at its website located at URL <http://www.usgbc.org>. The three current LEED Green Building Rating System Reference Guides and the LEED Green Building Rating System(s) they apply to are listed below:

**LEED Reference Guide for Green Building Design and Construction, 2009 Edition, U.S. Green Building Council, Inc. (2009), ISBN: 978-1-932444-14-8**

LEED 2009 for New Construction and Major Renovations Rating System

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LEED 2009 for Core & Shell Development Rating System

LEED 2009 for Schools New Construction and Major Renovations Rating System

**LEED Reference Guide for Green Building Operations and Maintenance, 2009 Edition, U.S. Green Building Council, Inc. (2009), ISBN: 978-1-932444-16-2**

LEED 2009 for Existing Buildings: Operations and Maintenance Rating System

**LEED Reference Guide for Green Interior Design and Construction, 2009 Edition, U.S. Green Building Council, Inc. (2009), ISBN: 978-1-932444-15-5**

LEED 2009 for Commercial Interiors Rating System

2.19. As used herein, the phrase “Licensed Professional” refers to a person formally certified by a licensing board to practice as a Professional Engineer, Registered Architect, or Registered Landscape Architect.

2.20. As used herein, the phrase “Rating System Sunset Date” refers to the date occurring six (6) years after the close of registration for a particular rating system, or particular rating system version, as determined and announced by us, and as further described in Section 8.4 of this Agreement.

2.21. As used herein, the phrase “Project Completion Date” refers to the date on which the building receives a Certificate of Occupancy or similar official indication that it is fit and ready for use.

2.22. As used herein, the phrase “Energy and Water Usage Data” means all information pertaining to water, electricity, gas, oil, steam, coal, wood, solar, wind, tidal kinetic or other such service or resource provided to the Project site and/or created at the Project site in part or in whole.

2.23. As used herein, the phrase “Government Entity” means a sovereign nation, and any of its agencies or instrumentalities, as well as a state, provincial or local government, including an agency, board or commission in the executive branch of such government.

2.24. As used herein, the phrase “U.S. Green Building Council, Inc” (also herein referred to as (“USGBC”) refers to the U.S. Green Building Council, Inc., a

501(c)(3) public charity of the District of Columbia with an address of 2101 L Street NW, Suite 500, Washington D.C. 20037, and all of its respective employees, agents, officers, directors, assigns and successors in interest. USGBC is the sole and exclusive owner of the LEED trademark and the LEED Certified certification mark which GBCI has been licensed to use.

### **3. OVERVIEW OF THE REGISTRATION AND LEED CERTIFICATION PROCESS**

3.1. You agree that (i) you shall comply with the LEED Certification process policies, deadlines, guidelines, and instructions as are published by us in the LEED Certification Policy Manual as of the date of the Owner's execution of the LEED Certification Agreement, or, should the Owner fail to execute such Agreement, then as of the date of your execution of this Agreement, and (ii) your Project will meet all applicable requirements therein specified, regardless of whether any particular section or subsection of such LEED Certification Policy Manual is specifically referenced in this Agreement.

3.2. This Agreement entitles you to establish your Project in LEED Online and to begin filling out a LEED Certification Application under a current LEED Green Building Rating System as identified in Section 2.14 of this Agreement.

3.3. Upon completing registration, the LEED Certification Application for your Project shall become accessible within LEED Online. At such time you will be able to enter and administer the LEED Certification Application for your Project, as well as accept and assign project team members to work on your LEED Certification Application, either in whole, or on a credit by credit or prerequisite by prerequisite basis.

3.4. Upon completing registration, your Project shall be represented in the Registered Projects List within the LEED Project Directory, which is maintained by us and viewable on our website at URL <http://www.gbci.org>. You may choose to limit this disclosure of Project information by selecting the confidentiality option within the Registration Forms or at anytime thereafter through the LEED Online Project administration tools.

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3.5. Upon completion of registration, you shall be entitled to submit credit interpretation requests, subject to all fees, restrictions, and requirements as identified by us in the LEED Certification Policy Manual.

3.6. This Agreement shall not entitle you to receive services from us constituting the review of your LEED Certification Application. Such services are procured through the execution of the LEED Certification Agreement, which is available at the Legal Page within LEED Online linked hereto, which details the LEED Certification process and requires the remittance of additional fees as identified within the LEED Certification Policy Manual. Nothing in this agreement shall be construed to establish a preexisting duty upon us, to you, to perform such services or to convey LEED Certification.

3.7. Prior to the submittal of your LEED Certification Application to us, the Owner(s) of your Project must enter LEED Online and execute the LEED Certification Agreement. At such point in time that the LEED Certification Agreement is executed by all Project Owners, the Project Administrator, and only the Project Administrator, may submit such application to us. Further, all LEED Certification Applications must be submitted via LEED Online.

3.8. Upon execution of the LEED Certification Agreement by all Project Owners, the submission of a LEED Certification Application, and the receipt of all applicable fees, we shall review your application in a manner consistent with the LEED Certification process policies, deadlines, guidelines, and instructions as are published by us in the LEED Certification Policy Manual as of the date of the Owner's execution of the LEED Certification Agreement.

3.9. You agree that up and until the date of the Owner's execution of the LEED Certification Agreement (or in the instance there are multiple Owners of your Project, the date upon which the first Owner to accept the agreement does so), that you shall abide by the LEED Certification process policies, deadlines, guidelines and instructions as are published by us in the LEED Certification Policy Manual as of the date of your execution of this Agreement.

3.10. You agree that the LEED Certification Application for your Project shall not be submitted for final review until after the Project Completion Date.

3.11. By registering your Project with GBCI, you represent that you will endeavor in good faith to use reasonable commercial efforts to: (i) design your Project to achieve LEED Certification at the LEED Certified Level, or higher, (ii) construct such Project so as achieve LEED Certification at the LEED Certified Level, or higher, and (iii) pursue LEED Certification for such Project. Further, by registering a Project, you represent that: (i) you have not been told by the Owner of the Project (if other than yourself), and you have no other reason to believe that the Project you are registering has not been or will not be designed to achieve LEED Certification at the LEED Certified Level, or higher, (ii) you have not been told by the Owner of the Project (if other than yourself), and you have no other reason to believe, that the Project you are registering will not be constructed in such a manner so as to achieve LEED Certification at the LEED Certified Level, or higher, and (iii) you have not been told by the Owner of the Project (if other than yourself), and you have no other reason to believe, that LEED Certification will not be pursued for the Project you are registering.

#### **4. PAYMENT AND ADJUSTMENT OF FEES**

4.1. You hereby assert your understanding and knowledge of the fees associated with registration and the LEED Certification process as set forth in the LEED Certification Policy Manual in the Section titled Fees. You agree that you will pay all such fees.

4.2. You hereby acknowledge and agree that such fees shall be remitted to us by credit card at the time of registration, or by check; however, we will not process the registration for your Project until payment has been received in full.

#### **5. DOCUMENTATION**

5.1. The LEED Certification process requires both the submission and retention of certain information and documentation demonstrating compliance with program requirements. You agree that all documentation you

provide to us for the purposes of completing a LEED Certification Application, and that which is submitted to us for the purposes of procuring a review in accordance with the terms, conditions, and provisions of the LEED Certification Agreement, shall be maintained by you at the site for your Project for a period of not less than seven (7) years commencing on the date of award of LEED Certification.

5.2. You agree that all documentation submitted for the purposes of completing a LEED Certification Application shall be provided in accordance with the policies and procedures pertaining to Minimum Narrative Requirements, Required Signatories, and Licensed Professional Exemptions. You hereby acknowledge that the Project Owner will be required to confirm that each Licensed Professional on the Project team who has registered as such with us meets each of the Licensed Professional Exemption requirements. You further agree that you shall notify us immediately of any adverse change in the status, or good standing, of any Licensed Professional(s) who has provided information through the Licensed Professional exemption process. Such obligation shall continue throughout the LEED Certification process up and until final award or denial of LEED Certification occurs.

## **6. APPLICATION SUBMISSION TIMELINES AND REVIEW POLICIES**

Upon the submission of the LEED Certification Application for your project, we shall strive to meet the timelines stipulated within our Application Review Policies as they are set forth in the LEED Certification Policy Manual. However, if we do not meet these timelines, you shall not be entitled to a refund of any portion of the fees associated with registration, LEED Certification, any recertification or expedited review fees, and/or any other fees you pay to us, nor will any submission deadline or Rating System Sunset Date be extended unless our failure to meet these timelines was a result of our willful misconduct, gross negligence, or wanton or reckless behavior.

## **7. MINIMUM PROGRAM REQUIREMENT, PRE-REQUISITE, AND CREDIT APPEALS**

If it is determined by us that you have not satisfied a

minimum program requirement, prerequisite or credit, you shall have the opportunity to appeal such determination by us. The procedures and costs for appealing the denial of a minimum program requirement, prerequisite, or credit are set forth in the LEED Certification Policy Manual. All appeals are decided by us in our reasonable discretion. You acknowledge that our resolution of such appeals shall be final and binding unless the same was arbitrary or capricious.

**8. LEED PROJECT REGISTRATION CLOSURE AND CANCELLATION POLICY**

8.1. You hereby acknowledge our intention to certify buildings in accordance with the most recent LEED Green Building Rating Systems made available by the USGBC.

8.2. You hereby acknowledge that we will regularly close registration for a Green Building Rating System or Green Building Rating System version concurrently with the release of a new Green Building Rating System or Green Building Rating System version. We reserve the right to close registration for a particular LEED Green Building Rating System or for a particular LEED Green Building Rating System version at any time and for any reason. Such closure of registration shall be immediately effective upon an announcement of the same by us.

8.3. You hereby acknowledge and agree that no additional Projects may be registered under a LEED Green Building Rating System or LEED Green Building Rating System version after registration for that LEED Green Building Rating System or LEED Green Building Rating System version is closed. If your Project has completed registration at the time that a LEED Green Building Rating System or LEED Green Building Rating System version is closed, your Project shall continue to exist within LEED Online as a registered Project.

8.4. You agree that you shall demonstrate the requisite level of activity on your LEED Certification Application prior to the Rating System Sunset Date as explained in the LEED Certification Policy Manual. You further understand and agree that if you are unable to demonstrate such requisite level of activity prior to the Rating

System Sunset Date, that the registration for your Project shall be canceled, or, at your election, your project will be registered and reviewed under the current LEED Green Building Rating System or LEED Green Building Rating System version offered by GBCI applicable to your Project type. If no current LEED Green Building Rating System or LEED Green Building Rating System version is available, then your project shall be canceled.

8.5. You agree that you shall maintain a substantial level of activity designed to effect the submission of a complete LEED Certification Application. As more fully set forth in the LEED Certification Policy Manual, we reserve the right to cancel the registration for your Project if, as determined solely and reasonably by us, you fail to maintain such substantial level of activity for a period of four (4) years or more.

8.6. You agree that if you have registered your Project in accordance with the New Construction, Core & Shell or Commercial Interiors rating systems that you must submit a LEED Certification Application no later than two (2) years after the Project Completion Date. You further understand and agree that if you are unable to submit a LEED Certification Application for your Project within such two (2) year period that the registration for your Project shall be canceled.

8.7. You agree that if the registration for your Project is cancelled in accordance with these terms that your only recourse for seeking LEED Certification for your Project is to register your Project as a new Project under the then-most recent LEED Green Building Rating System or LEED Green Building Rating System version applicable to your Project type, to the extent that such rating system remains open for registration.

8.8. You agree that you shall not be entitled to the return or refund of any fees paid by you to us pertaining to your Project if your registration is subject to cancellation in accordance with these terms.

**9. REGISTRATION OF A PROJECT SUBJECT TO AN AWARD, FINAL DENIAL OR REVOCATION OF LEED CERTIFICATION**

You agree that if your Project is subject to award of LEED Certification, denial of LEED Certification, or revo-

cation of LEED Certification as further explained in the LEED Certification Policy Manual, under any LEED Green Building Rating System, that you shall not register that same Project under the same or under any other LEED Green Building Rating System except for the current version of the LEED for Existing Buildings: Operations and Maintenance Rating System.

#### **10. CERTIFICATION AUDIT AND REVOCATION**

10.1. You agree that at any time we may audit your documentation and/or conduct an audit by performing a site visit of your Project as set forth in the LEED Certification Policy Manual in the Section titled Certification Challenge Policy.

10.2. You acknowledge that we retain the right, in our sole reasonable discretion, to deny or revoke LEED Certification from any Project where we are denied access to perform a site visit, or we are denied the ability to examine retained documentation for your Project.

10.3. We reserve the right to revoke LEED Certification if we determine that the same was conferred based on false or misleading information that you, or others authorized by you provided to us, and that in any way materially affects the grant of LEED Certification for your Project.

#### **11. CERTIFICATION EXPIRATION POLICY**

##### **[Applies to Projects Registered Under the LEED 2009 for Existing Buildings: Operations and Maintenance Rating System Only]**

You agree that if you are submitting a LEED Certification Application under the LEED 2009 for Existing Buildings: Operations and Maintenance Rating System you shall be required to achieve LEED Certification at least once every five (5) years from the date of the most recent award of LEED Certification. If you are unable or unwilling to achieve LEED Certification at least once every five (5) years, the LEED Certification for your Project shall expire and all rights and privileges related to the LEED Certified status, including but not limited to rights and licenses to use and display certain intellectual property owned or licensed by us, shall be immediately revoked.

## **12. PROJECT MONITORING**

12.1. It is our intention to review the ongoing performance of your Project once it is completed to assess compliance with LEED Green Building Rating System requirements. You understand that it shall be a material condition of LEED Certification that the Owner of your Project agree to authorize both us and USGBC to access and review your Project's Energy and Water Usage Data from the utility service provider and/or the whole-project metering facility where such meters are in place, so long as such access is reasonably practicable. This authorization shall be maintained for a period of five (5) years following the date your Project achieves LEED Certification.

12.2. You acknowledge that it shall be the burden of the Project Owner to notify all subsequent Owners and/or occupants of your Project of the project monitoring requirements stated in section 12.1 of this Agreement.

12.3. You acknowledge that the Project Owner shall be required to use reasonable efforts to require that all subsequent Owners and/or occupants of your Project, in part or in whole, comply with the project monitoring requirements stated in section 12.1 of this Agreement.

12.4. You acknowledge that the Project Owner shall be required to authorize such access as stipulated within the project monitoring requirements section 12.1 of this Agreement within the first calendar year after your Project achieves LEED Certification. It is our intention to review the ongoing performance of your Project to assess compliance with LEED Green Building Rating System requirements. You understand that it is a material condition of LEED Certification that the Project Owner(s) agrees to authorize both us and USGBC to access and review your Project's Energy and Water Usage Data from the utility service provider and/or the whole-project metering facility where such meters are in place, so long as such access is reasonably practicable. This authorization shall be maintained for a period of five (5) years following the date your Project achieves LEED Certification.

## **13. INTELLECTUAL PROPERTY HELD BY YOU**

13.1. With regards to any and all content and/or data

that you provide to us in the LEED Certification Application for your Project (but not including any plans, drawings, schema and/or designs), you hereby grant us and USGBC a limited, irrevocable, perpetual, non-exclusive, transferable, royalty-free, worldwide, and sublicensable right to use, reproduce, prepare derivative works from, distribute, display and publish such content and/or data in any and all media and formats known now or in the future. This right is granted at the time you upload or enter such information within LEED Online and shall be retained by us regardless of whether the LEED Certification Application for your Project is submitted to us for review. Such rights and licenses shall survive the cancellation of registration for your Project by you or by us, as well as a denial or revocation of LEED Certification for your Project by us, or abandonment of LEED Certification by you.

13.2. We agree that the use of such materials identified within section 13.1 of this agreement by us and/or any agent, authorized representative, assign, or sublicensee by us, shall be for the following limited purposes: i) the furthering of research pertaining in general to green buildings and in particular buildings that achieve LEED Certification under a LEED Green Building Rating System; ii) educational purposes designed to promote the proliferation of knowledge about and/or participation in the development of the LEED Green Building Rating Systems; and iii) promotion of the sale of goods and/or services directly related to LEED or the LEED Green Building Rating Systems.

#### **14. INTELLECTUAL PROPERTY HELD BY GBCI AND USGBC**

14.1. You acknowledge that GBCI and USGBC own and/or maintain a license to use several proprietary trademarks, certification marks, and associated acronyms, logos and other graphic images, including but not limited to the “GBCI” trademark, the “LEED” trademark, the “USGBC” trademark, and the LEED Certified certification mark, (collectively “Logos”), which are powerful marketing tools and valuable assets held by us and USGBC respectively.

14.2. You agree to abide by the guidelines restricting

the use of these logos, trademarks, and other intellectual property as set forth in the LEED Certification Policy Manual, in the Section titled Logo Guidelines.

14.3. You agree that prior to a final determination by us that your Project has achieved LEED Certification, that the use of proprietary trademarks, certification marks, and associated acronyms, logos and other graphic images, including but not limited to the "GBCI" trademark, the "LEED" trademark, the "USGBC" trademark, or the LEED Certified certification mark as held by USGBC or us in such a way as to suggest that your Project has achieved such LEED Certification shall constitute an unauthorized use and/or reference of such intellectual property.

14.4. You acknowledge that if you engage in any unauthorized use or reference to the proprietary trademarks, certification marks, associated acronyms, logos and other graphic images, including but not limited to the "GBCI" trademark, the "LEED" trademark, the "USGBC" trademark, and or the LEED Certified certification mark, your right to continue using any such intellectual property may be terminated and that irreparable injury will occur if such unauthorized use continues, and, without limiting any remedies available to USGBC and/or GBCI you agree, that USGBC and/or GBCI shall be entitled to temporary, preliminary, and permanent injunctive relief, plus an award for damages, costs, and reasonable attorneys' fees arising from or relating to such unauthorized use or reference.

14.5. You understand and agree that should your Project be demonstrated to be in compliance with all LEED Certification requirements, we will offer the Project Owner a limited, non-exclusive, revocable, royalty-free license to use the "LEED" trademark, the LEED Certified certification mark, and other associated logos, subject to reasonable restrictions of use as set forth in the LEED Certification Policy Manual. Such license does not constitute a transfer of ownership and may be revoked in accordance with the Terms of this Agreement.

## **15. RELEASE AND LIMITATION OF LIABILITY**

15.1. You knowingly and intelligently waive and release all claims and causes of action against GBCI

and USGBC arising out of, or in any way related to, registration and/or the LEED Certification process other than claims and causes of action for your losses, damages, costs or expenses that are the direct and proximate result of willful misconduct, gross negligence, or wanton or reckless behavior by GBCI, USGBC, or both. This waiver and release includes, but is not limited to, claims and causes of action arising out of or relating to GBCI's decision not to certify a Project at a particular level, or at all, GBCI's decision that particular minimum program requirements, prerequisites, and/or credits have not been satisfied, or delays in the LEED Certification process.

15.2. If, after taking into account the provisions set forth in these Terms and all defenses available to GBCI, USGBC, or both, it is determined that either GBCI and/or USGBC is liable to you, then the maximum amount that you can recover from GBCI or USGBC for any and all injuries, claims, losses, expenses, costs, and damages whatsoever arising out of, or in any way related to, registration and/or the LEED Certification process is capped at and shall not exceed the sum of (i) the fees that you paid to GBCI to register the Project that is the subject of your claim, and (ii) the fees that you paid to GBCI to apply for LEED Certification for the Project that is the subject of your claim, less any refunds that GBCI provided to you for said Project.

## **16. WAIVER OF CONSEQUENTIAL DAMAGES**

Notwithstanding anything herein to the contrary, neither you nor GBCI nor USGBC shall be liable for any consequential losses or damages arising out of, or in any way related to, registration and/or the LEED Certification process, whether arising in contract, tort (including negligence), strict liability or otherwise, including, but not limited to, losses of use, profits, business, reputation, financing, property value, tenants, or productivity.

## **17. DISCLAIMER OF WARRANTIES**

Both GBCI and USGBC expressly disclaim any and all warranties including the warranty of habitability, merchantability, fitness for a particular purpose, and or anything else concerning any Project. It is understood and

agreed that there are no warranties, express or implied, written or oral, statutory or otherwise, with respect to either the services or the certifications provided by GBCI, USGBC, or both. By way of example only, and without limiting the broad scope of the foregoing, it is understood that LEED Certification, whether at the Certified level or any other level, does not mean that the Project is structurally sound or safe, constructed in accordance with applicable laws, regulations or codes, free of mold or mildew, or free of volatile organic compounds or allergens.

**18. INDEMNIFICATION**

With respect to each and every Project you register for LEED Certification and/or for which you submit a LEED Certification Application, you agree to indemnify GBCI and USGBC for, and to hold them harmless against, any and all third-party claims, judgments, liabilities, causes of action, losses, damages, costs and expenses arising from or in any way related to registration and/or the LEED Certification process to the extent that such claim, judgment, liability, cause of action, loss, damage, cost or expense was not caused by GBCI's, USGBC's or both organization's negligence, gross negligence, willful misconduct, or wanton or reckless behavior.

**19. NOTICE OF CLAIM**

19.1. If you have been damaged by any act or omission of GBCI, then, within thirty (30) calendar days after the occurrence of each such act or omission, you must provide us with written notice describing with reasonable detail the act and/or omission, how you were damaged by it, and a reasonable estimate of the extent of monetary amount of your damages you claim to have suffered. You must provide this written notice to us by certified mail, return receipt requested, addressed as follows:

**General Counsel  
Green Building Certification Institute  
2101 L Street, NW  
Suite 650  
Washington, DC 20037**

19.2. Your providing us with the notice in the manner

and within the time frame described in section 19.1, above, is an express condition precedent to your right to commence and maintain litigation against us. You knowingly and intelligently waive any and all claims and causes of action against us to the extent that you do not provide us with the notice in the manner and within the time frame described in section 19.1, above. Further, you agree not to commence litigation against GBCI until sixty (60) calendar days after we receive (as evidenced by our signature on the return receipt) the written notice described in section 19.1, above. Your right to commence and maintain litigation against us is further limited as described in section 20, 21, and 22, below.

## **20. MEDIATION**

Within thirty (30) calendar days after receiving the notice described in section 19.1, above, we may elect to refer your claim to non-binding mediation (hereafter referred to as “Mediation”). If we refer your claim to Mediation, then you shall not be entitled to commence litigation against us until after the Mediation is completed as documented by a letter from the mediator stating that the Mediation is completed; provided, however, if there comes a time when the applicable statute of limitations for your claim will expire within ninety (90) calendar days and the Mediation has not been completed, then you may commence litigation for the sole purpose of satisfying the applicable statute of limitations and you shall immediately stay such litigation until the Mediation is completed. Mediation shall take place in person in the District of Columbia, Washington D.C., before a mediator jointly selected by you and us, and both you and we shall have at least one person attend the Mediation in person who has full authority to settle your claim. The costs and fees billed by the mediator shall be split and paid equally by you and us.

## **21. GOVERNING LAW**

These Terms, and all of the rights and duties of you and GBCI arising out of or related to registration, the LEED Certification process, or the relationship between you and GBCI, are governed by the laws of the District of Columbia, United States of America, without regard to its conflicts of law rules. This provision applies to all claims and causes of action that you have or acquire against

GBCI, whether based in contract, tort, statute, or anything else.

**22. VENUE**

You agree that any and all claims and causes of action that you have or acquire against GBCI shall be commenced in and decided exclusively by a court of competent jurisdiction located in the District of Columbia, United States of America. You agree to submit to the personal and exclusive jurisdiction of the courts located in the District of Columbia, United States of America. You waive all defenses and arguments that the courts located in the District of Columbia, United States of America, constitute an inconvenient forum based upon your residence, your domicile, the location of the Project that is the subject of the litigation, the location of witnesses, the location of documents, or anything else. You knowingly and intelligently waive your right to a jury trial with respect to any and all claims and causes of action that you have or acquire against GBCI.

**23. NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole and exclusive benefit of you and GBCI. Nothing in these Terms, or the Agreement, shall be deemed to create any third party beneficiaries or confer any benefit or rights on or to any person other than you and GBCI, provided, however, that USGBC is specifically a contingent third party beneficiary of this Agreement, Only you and GBCI, and USGBC as a contingent third party beneficiary, shall be entitled to enforce these Terms, and the Agreement, and to exercise the rights contained within them.

**24. MISCELLANEOUS**

24.1. If any provision set forth in this Agreement, or the application thereof to any circumstance, shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be more narrowly construed so that it becomes legal and enforceable, and the remainder of this Agreement, and the application of such provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, while each provision set forth in this Agreement shall be valid and enforce-

able to the fullest extent permitted by law, the entire Agreement will not fail on account thereof, and the balance of the Agreement will continue in full force and effect to the maximum extent permitted by law or equity while preserving, to the fullest extent possible, its original intent.

24.2. The headings used in this document are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

24.3. Any rule that ambiguities are construed or interpreted against the drafter of a document, or against the party for whose benefit the document is made, shall not apply to these Terms.

24.4. This Agreement may only be modified in writing and all such written modifications must be signed by you and the then-current General Counsel, President, Director of Certification, or Chief Operating Officer of GBCI. No other individuals have the authority to modify this Agreement on behalf of GBCI. No action or inaction by GBCI shall be construed as a waiver of this or any other provision of these Terms.

**25. GOVERNMENT ENTITIES**

If you are a Government Entity, the following clauses do *not* apply to you: Clause 15, Release and Limitation of Liability; Clause 16, Waiver of Consequential Damages; Clause 18, Indemnification; Clause 20, Mediation; and Clause 22, Venue.

**Major Changes from LEED-NC v2.2 to LEED 2009 NC**

<b>Sustainable Sites</b>	<b>Changes</b>
Credit 2 — Development Density & Community Connectivity	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 5 points.</li> </ul>
	<ul style="list-style-type: none"> <li>● Clarified definition of eligible Basic Services</li> </ul>
Credit 4.1 — Alternative	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 6 points.</li> </ul>
Transportation: Public Transportation Access	<ul style="list-style-type: none"> <li>● Clarified how to measure distance to public transit.</li> </ul>

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<b>Sustainable Sites</b>	<b>Changes</b>
Credit 4.3 — Alternative	● Reweighted from 1 point to 3 points.
Transportation: Low Emitting & Fuel Efficient Vehicles	● Added language addressing the use of discounted parking for Option 2. ● Added Option 4 addressing car sharing.
Credit 4.4 — Alternative	● Reweighted from 1 point to 2 points.
Transportation: Parking Capacity	● Added language addressing the use of discounted parking for Option 2. ● Added Option 5 clarifying the requirements for mixed-use projects.
Credit 7.1 — Heat Island Effect:	● Clarified requirements for Option 1 and Option 2.
<b>Non-Roof</b>	
Credit 8 — Light Pollution Reduction	● Modified requirements for interior and exterior light pollution.
<b>Water Efficiency</b>	
Prerequisite 1 — Water Use	● Added new prerequisite which was previously WEc3.1.
Reduction: 20%	● Updated baselines for flow rates, based on the Energy Policy Act of 1992 and subsequent rulings by the Department of Energy, requirements of the Energy Policy Act of 2005, and the plumbing code requirements as stated in the 2006 editions of the Uniform Plumbing Code or International Plumbing Code.
Credit 1.1 — Water Efficient	● Reweighted from 1 point to 2 points.
Landscaping: Reduce by 50%	

<b>Sustainable Sites</b>	<b>Changes</b>
Credit 1.2 — Water Efficient	● Reweighted from 1 point to 2 points.
Landscaping: No Potable Water Use or No Irrigation	
Credit 2 — Innovative Wastewater <b>Technologies</b>	● Reweighted from 1 point to 2 points.
Credit 3 — Water Use Reduction	● Reweighted from 2 points to 4 points.
	● Modified thresholds to 30%, 35%, and 40% reductions.
	● Updated baseline for flow rates, based on the Energy Policy Act of 1992 and subsequent rulings by the Department of Energy, requirements of the Energy Policy Act of 2005, and the plumbing code requirements as stated in the 2006 editions of the Uniform Plumbing Code or International Plumbing Code.
<b>Energy &amp; Atmosphere</b>	<b>Changes</b>
Prerequisite 2 — Minimum Energy Performance	● Updated referenced standard to ASHRAE 90.1 2007.
	● Revised to include minimum energy performance improvement, previously in EAc1.
	● Revised to include three compliance paths reflecting EAc1.
Credit 1 — Optimize Energy Performance	● Reweighted from 1 — 10 points to 1 — 19 points.
	● Updated reference standard.
	● Revised achievement thresholds. Higher thresholds were added.

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<b>Sustainable Sites</b>	<b>Changes</b>
	<ul style="list-style-type: none"> <li>● Prescriptive path Option 2 now includes Advanced Energy Design Guides for Small Retail, Small Warehouses, and Self Storage buildings.</li> </ul>
	<ul style="list-style-type: none"> <li>● Prescriptive path Option 3 now excludes healthcare, warehouse, and laboratory building types.</li> </ul>
Credit 2 — On-Site Renewable Energy	<ul style="list-style-type: none"> <li>● Reweighted from 1-3 points to 1-7 points.</li> </ul>
	<ul style="list-style-type: none"> <li>● Revised achievement thresholds. Lower and higher thresholds added.</li> </ul>
Credit 3 — Enhanced Commissioning	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 2 points.</li> </ul>
Credit 4 — Enhanced Refrigerant Management	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 2 points.</li> </ul>
	<ul style="list-style-type: none"> <li>● Language added prohibiting the operation of fire suppression systems that contain ozone-depleting substances.</li> </ul>
Credit 5 — Measurement & Verification	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 3 points.</li> </ul>
	<ul style="list-style-type: none"> <li>● Requirement added to provide process for corrective action if M&amp;V plan shows energy savings are not being achieved.</li> </ul>
Credit 6 — Green Power	<ul style="list-style-type: none"> <li>● Reweighted from 1 point to 3 points.</li> </ul>
	<ul style="list-style-type: none"> <li>● The Green-e product certification requirement was clarified to specify Green-e Energy products.</li> </ul>
<b>Materials &amp; Resources</b>	<b>Changes</b>
Credit 1.1 — Building Reuse:	<ul style="list-style-type: none"> <li>● Combined with previous MRc1.2.</li> </ul>

<b>Sustainable Sites</b>	<b>Changes</b>
Maintain Existing Walls, Floors & Roof	<ul style="list-style-type: none"> <li>● Reweighted from 1-2 points to 1-3 points.</li> <li>● Added a lower achievement threshold.</li> </ul>
Credit 2 — <b>Construction Waste Management</b>	<ul style="list-style-type: none"> <li>● Combined MRc2.1 and 2.2 into one credit.</li> </ul>
Credit 3 — Materials Re-use	<ul style="list-style-type: none"> <li>● Combined MRc3.1 and 3.2 into one credit.</li> </ul>
Credit 4 — Recycled Content	<ul style="list-style-type: none"> <li>● Combined MRc4.1 and 4.2 into one credit.</li> </ul>
Credit 5 — Regional Materials	<ul style="list-style-type: none"> <li>● Combined MRc5.1 and 5.2 into one credit.</li> </ul>
Credit 7 — Certified Wood	<ul style="list-style-type: none"> <li>● No changes were made for 2009 release. Credit is undergoing a separate development process and will be balloted outside the LEED 2009 Rating System as a single credit.</li> </ul>
<b>Indoor Environmental Quality</b>	<b>Changes</b>
Prerequisite 1 — Minimum Indoor Air Quality Performance	<ul style="list-style-type: none"> <li>● Updated referenced standard to ASHRAE Standard 62.1-2007.</li> </ul>
Prerequisite 2 — Environmental Tobacco Smoke Control	<ul style="list-style-type: none"> <li>● Residential (Case 2) clarified to include hospitality.</li> <li>● Added requirement to weather-strip exterior doors and windows in residential projects.</li> </ul>
Credit 1 — Outdoor Air Delivery Monitoring	<ul style="list-style-type: none"> <li>● Updated referenced standard to ASHRAE Standard 62.1-2007.</li> </ul>
Credit 2 — Increased Ventilation	<ul style="list-style-type: none"> <li>● Updated referenced standard to ASHRAE Standard 62.1-2007.</li> </ul>

<b>Sustainable Sites</b>	<b>Changes</b>
Credit 3.1 — <b>Construction</b> Indoor Air	<ul style="list-style-type: none"> <li>● Updated referenced standard to the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines For Occupied Buildings Under <b>Construction</b>, 2nd Edition 2007, ANSI/SMACNA 008-2008 (Chapter 3).</li> </ul>
<b>Quality Management Plan — During Construction</b>	
Credit 3.2 — <b>Construction</b> Indoor Air Quality Management Plan —	<ul style="list-style-type: none"> <li>● Clarified that all finishes must be installed prior to flush-out.</li> <li>● Threshold for formaldehyde level was revised from 50 to 27 parts per billion in Option 2, Air Testing.</li> </ul>
Credit 4.3 — Low-Emitting Materials — Flooring Systems	<ul style="list-style-type: none"> <li>● Updated to include all flooring systems.</li> <li>● Added requirement to Option 1 that hard surface flooring must be FloorScore compliant or 100% of the non-carpet finished flooring must be FloorScore-certified and must constitute at least 25% of the finished floor area.</li> <li>● Added requirement to Option 1 that concrete, wood, bamboo, and cork finishes must meet SQADMD Rule 1113, Architectural Coatings, rules in effect on January 1, 2004.</li> </ul>

<b>Sustainable Sites</b>	<b>Changes</b>
	<ul style="list-style-type: none"> <li>● Added requirement to Option 1 that tile setting adhesives and grout must meet SCAQMD Rule 1168. VOC limits correspond to an effective date of July 1, 2005 and rule amendment date of January 7, 2005.</li> </ul>
	<ul style="list-style-type: none"> <li>● Added Option 2 which requires that all flooring elements installed in the building interior must meet the testing and product requirements of the California Department of Health Services Standard Practice for the Testing of Volatile Organic Emissions from Various Sources Using Small-Scale Environmental Chambers, including 2004 Addenda.</li> </ul>
<p>Credit 5 — Indoor Chemical &amp; Pollutant Source Control</p>	<ul style="list-style-type: none"> <li>● Required length for permanent entryway system changed from 6 feet to 10 feet.</li> </ul>
	<ul style="list-style-type: none"> <li>● Added requirement to provide containment for disposal of hazardous liquid wastes in places where water and chemical mixing occurs.</li> </ul>
<p>Credit 6.2 — Controllability of Systems: Thermal Comfort</p>	<ul style="list-style-type: none"> <li>● Updated reference standard to ASHRAE 62.1-2007.</li> </ul>
<p>Credit 7.2 — Thermal Comfort — Verification</p>	<ul style="list-style-type: none"> <li>● Clarified that EQc7.1 must be earned in order to be eligible for EQc7.2</li> </ul>
	<ul style="list-style-type: none"> <li>● Clarified that residential projects are not eligible for this credit.</li> </ul>

<b>Sustainable Sites</b>	<b>Changes</b>
Credit 8.1 — Daylight & Views:	<ul style="list-style-type: none"> <li>Deleted the glazing factor calculation option.</li> </ul>
Daylight 75% of Spaces	<ul style="list-style-type: none"> <li>Simulation model option updated to include 500 foot-candle maximum in clear sky conditions. Projects with automated shades for glare control only need to demonstrate compliance with minimum fc levels.</li> </ul>
	<ul style="list-style-type: none"> <li>Prescriptive option added.</li> </ul>
	<ul style="list-style-type: none"> <li>Added Option 4 which allows a combination of Options 1, 2, and 3, based on square footage.</li> </ul>

LEED 2009 also revamped entirely the LEED Accredited Professional Program incorporating into it a method of acknowledging those with experience in the “green building world”. There are now three levels to accreditation:

- LEED Green Associate for those with “general knowledge of green building practices”. Candidates must have documented: (i) experience on a LEED-registered project, (ii) documented employment in a sustainable field of work, or (iii) participated in or graduated from an education program addressing sustainable building principles. The applicant must also be willing to submit to an application audit.

- LEED AP for those who “continue to signify an advanced depth of knowledge in green building practices” and are able to document experience with at least one LEED project within the past three years. This designation will also signify a subspecialty in a particular LEED Rating System (i.e., Operations + Maintenance, Homes, Building Design + Construction, Interior Design, Construction, and Neighborhood Development). The LEED AP exam is divided into two parts: (i) the LEED Green Associate exam and (ii) a specialty exam based on one of the LEED Rating Systems. The applicant must also be willing to submit to an application audit.

- LEED Fellows for those “leading professionals distinguished by their years of experience and contributions to the standards of practice and body of knowledge for achieving continuous improvement in the green building field.”

Additionally, there are basic requirements which include: (i) continuing education, (ii) the “Disciplinary and Exam Appeals Policy”, and (iii) and payment of the credential maintenance fee.

LEED Online was also an improvement to the certification process where Version 2 left off. Version 2, a paper application format with (submission of a binder or CD) required two (2) copies of the application with payment of certification review fees. Applicants then waited for a response from GBCI. Now with LEED Online, “project teams can manage project details, complete documentation requirements for LEED credits and prerequisites, upload supporting files, submit applications for review, receive reviewer feedback, and ultimately earn LEED certification.” A major benefit of this faster and more user-friendly system is the capability for the project team to document compliance together as a team so that no required submission falls through the cracks.

USGBC promises that with LEED Online:

- A team member involved in more than one registered LEED project “will be able to sort, view, and group their projects according to a number of project traits, including location, design or management firm.”

- Each team member will have roles and credit responsibility assigned to them so keeping track of who is responsible for what is achieved. An added benefit to the system permits the LEED reviewer to contact the project team through the process if any minor clarifications are needed to complete the review.

- Now there are “Status indicators and timelines” where “the system explains all the steps in the review and certification process more clearly and highlights which steps a specific project has completed. The system displays specific dates associated with each phase and step, including the target dates each review will be returned to the customer.” Furthermore, with this new streamlined process, GBCI touts “End-to-end process support — the new system shepherds each project team through the entire

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certification process, from initial project registration through all review phases. Further, the registration phase includes extra help for beginners to decide which LEED rating system is best suited for their project type, while allowing experienced users to get through the process quickly.”

- New data is required for LEED Online as well as a data-check system is in place. For example, a building's gross floor area or FTE occupancy is now required for certain LEED credits. But LEED Online also makes it easier for the user by automatically populating basic information in all applicable forms after the team member enters data the first time, thus saving re-entry time and helping to ensure that the forms are consistent. Since in the past there were delays processing due to those applications submitted for review without required data, LEED Online now eliminates this by alerting users when required data is missing.

But with any new system, there is always a burden in exchange for a benefit. One of the costs here is that the fees for certification have increased which may, in itself, deter some projects from registering. The charts below explain in detail the new fees. When a project team submits documentation for review on LEED Online, the fee is paid. As an accommodation to large property owners, GBCI wants users to know that although the following fees are for single-building LEED projects only that there may be special multiple-building project rates available. The irony is that if the developer has many buildings in its portfolio, they may have the financial wherewithal to afford the fees anyway.

**The New Project Certification Rates: Effective January 11, 2010** (courtesy of NEXUS Green Building Resource Center).

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HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
	Fixed Rate	Based on Square Footage	Fixed Rate	Per credit
<b>LEED 2009; New Construc- tion, Commer- cial Interiors, Schools, Core &amp; Shell full certi- fication</b>				
<b>Design Review</b>				
USGBC Members	\$2,000	\$0.04/sf	\$20,000	\$500
Non-Members	\$2,250	\$0.045/sf	\$22,500	\$500
Expedited Fee <sup>a1</sup>		\$5,000 regardless of square footage		\$500
<b>Construction Review</b>				
USGBC Members	\$500	\$0.010/sf	\$5,000	\$500
Non-Members	\$750	\$0.015/sf	\$7,500	\$500

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	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
Expedited Fee <sup>a1</sup>		\$5,000 regardless of square footage		\$500
<b>Combined De- sign &amp; Con- struction Re- view</b>				
USGBC Members	\$2,250	\$0.045/sf	\$22,500	\$500
Non-Members	\$2,750	\$0.055/sf	\$27,500	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>LEED for Exist- ing Buildings</b>	Fixed Rate	Based on Square Footage	Fixed Rate	Per credit
<b>Initial Certifi- cation Review</b>				
USGBC Members	\$1,500	\$0.03/sf	\$15,000	\$500

HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
Non-Members	\$2,000	\$0.04/sf	\$20,000	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>Recertification Review <sup>aa1</sup></b>				
USGBC Members	\$750	\$0.015/sf	\$7,500	\$500
Non-Members	\$1,000	\$0.02/sf	\$10,000	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>LEED for Core &amp; Shell: Precer- tification</b>				
USGBC Members		Fixed Rate		Per credit
Non-Members		\$3,250		\$500
		\$4,250		\$500

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Less than 50,000 Square Feet      50,000-500,000 Square Feet      More Than 500,000 Square Feet      Appeals (if applicable)

Expedited Fee <sup>a1</sup>	\$5,000	\$500	
<b>CIRs (for all Rating Systems)</b>		\$220	

<sup>a1</sup> In addition to regular review fee. View more information on the Expedited Review process.  
<sup>aa1</sup> The Existing Building Recertification Review fee is due when the customer submits the application for recertification review. Before submitting, please contact GBCI's project certification staff to get a promotion code.

HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
	Fixed Rate	Based on Square Footage	Fixed Rate	Per credit
<b>LEED 2009; New Construc- tion, Commer- cial Interiors, Schools, Core &amp; Shell full certi- fication</b>				
<b>Design Review</b>				
USGBC Members	\$2,000	\$0.04/sf	\$20,000	\$500
Non-Members	\$2,250	\$0.045/sf	\$22,500	\$500
Expedited Fee <sup>a1</sup>		\$5,000 regardless of square footage		\$500
<b>Construction Review</b>				
USGBC Members	\$500	\$0.010/sf	\$5,000	\$500
Non-Members	\$750	\$0.015/sf	\$7,500	\$500

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	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
Expedited Fee <sup>a1</sup>		\$5,000 regardless of square footage		\$500
<b>Combined De- sign &amp; Con- struction Re- view</b>				
USGBC Members	\$2,250	\$0.045/sf	\$22,500	\$500
Non-Members	\$2,750	\$0.055/sf	\$27,500	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>LEED for Exist- ing Buildings</b>	Fixed Rate	Based on Square Footage	Fixed Rate	Per credit
<b>Initial Certifi- cation Review</b>				
USGBC Members	\$1,500	\$0.03/sf	\$15,000	\$500

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	Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
Non-Members	\$2,000	\$0.04/sf	\$20,000	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>Recertification Review <sup>aa1</sup></b>				
USGBC Members	\$750	\$0.015/sf	\$7,500	\$500
Non-Members	\$1,000	\$0.02/sf	\$10,000	\$500
Expedited Fee <sup>a1</sup>		\$10,000 regard- less of square footage		\$500
<b>LEED for Core &amp; Shell: Precer- tification</b>				
USGBC Members		Fixed Rate		Per credit
Non-Members		\$3,250		\$500
		\$4,250		\$500

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Less than 50,000 Square Feet	50,000-500,000 Square Feet	More Than 500,000 Square Feet	Appeals (if ap- plicable)
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Expedited Fee <sup>a1</sup>	\$5,000		\$500
<b>CIRs (for all Rating Sys- tems)</b>			\$220

<sup>a1</sup> In addition to regular review fee. View more information on the Expedited Review process.  
<sup>aa1</sup> The Existing Building Recertification Review fee is due when the customer submits the application for recertification review. Before submitting, please contact GBCI's project certification staff to get a promotion code.

**Platinum Certification Rebates**

Projects that are awarded LEED platinum certification in 2009 will receive a rebate for all certification fees. The rebate applies to projects that certify using LEED for New Construction, LEED for Existing Buildings, LEED for Commercial Interiors, LEED for Core & Shell, or LEED for Schools. Projects that certify this year under newly released LEED rating systems not listed above (excluding pilot projects and LEED for Homes projects) will also be eligible. Registration fees, appeal review fees, and any additional fees required to expedite LEED certification will not be refunded.

**Special Certification Fees**

**Projects registered between 2002 and 2005**

The following certification fees apply to projects registered under LEED for New Construction Version 2.1 between November 15, 2002 and November 15, 2005, and projects registered under LEED for Existing Buildings Version 2.0 and LEED for Commercial Interiors Version 2.0 before November 15, 2005.

**Less than 75,000 Square Feet      75,000 — 300,000 Square Feet      More than 300,000 Square Feet**

<b>Paper Certification Fees <sup>a1</sup></b>	<b>Fixed Rate</b>	<b>Based on Square Footage</b>	<b>Fixed Rate</b>
USGBC Members	\$1,500.00	\$0.020 / sf	\$6,000.00
Non-Members	\$1,875.00	\$0.025 / sf	\$7,500.00

Note: All fees are subject to change. Sorry, no refunds.

<sup>a1</sup> Projects registered before November 15, 2005 that wish to use LEED Online are subject to the new certification fee structure and are eligible for a possible credit toward that new certification fee. For more information, please contact GBCI's project certification staff.

### **Projects registered prior to 2002**

Certification fees for projects registered under LEED for New Construction Version 2.0 (prior to November 15, 2002) is \$1,200.00 (USGBC Members) and \$1,500.00 (Non-Members).

But what about all those existing buildings certified as NC or EB that will have to recertify? How will this be accomplished? All LEED-NC and LEED-EB projects that will come up for recertification will be required to register under the LEED Online Existing Buildings Rating System version that is in effect at the time of the recertification registration. How to prepare for this is unclear. We know the LEED 2009 program requirements which are set forth below. What will be the LEED 2011, 2012, 2015 program requirements is anyone's guess. Presumably there will be further enhancements to the system. The troubling issue is what happens if a building became certified under the old system and cannot for either structural constraints or other issues cannot rise with the tide? To compound the problem for building owners is how the loss of certification (if they are unable to come up to the new standards) or the reduction in certification level (from Platinum to Gold, Gold to Silver or Silver to Certified) will affect those tenants in their properties which signed leases specifically for a level of certification? These consequential losses are very troubling and there is no easy solution at hand.

### **LEED 2009 Minimum Program Requirements**

Apply to LEED 2009 for New Construction and Major Renovations, LEED 2009 for Core & Shell Development, LEED 2009 for Schools New Construction and Major Renovations, Commercial Interiors, and Existing Buildings: Operations & Maintenance.

Do not apply to LEED for Homes, LEED for Neighborhood Development, or any LEED Rating System adopted prior to 2009.

### **Version November 2009**

This version adds to the April 2009 version clarifying language, but not new requirements, that was approved by the LEED Steering Committee and the USGBC Execu-

tive Committee in November 2009.

### **Introduction**

This document identifies the MPRs, or minimum characteristics that a project must possess in order to be eligible for LEED Certification. These requirements define the types of buildings that the LEED Green Building Rating Systems were designed to evaluate, and taken together serve three goals: to give clear guidance to customers, to protect the integrity of the LEED program, and to reduce complications that occur during the LEED certification process. The requirements in this document will apply to all those, and only those projects seeking to demonstrate conformance with the rating systems listed above.

Definitions, exceptions, and more extensive guidance relating to these MPRs are available in a separate document titled: *LEED 2009 MPR Supplemental Guidance*. Terms that are *italicized and underlined* here are defined in the Supplemental Guidance document (they are marked as such only the first time that they appear).

At this time U.S. Green Building Council, Inc. has authorized the Green Building Certification Institute (GBCI) to confer LEED Certification. GBCI has agreed to consider requests for exceptions to MPRs that are not already defined in the LEED 2009 MPR Supplemental Guidance document on a case-by-case basis for special circumstances.

In addition to complying with the MPRs, a project must also demonstrate compliance with all rating system requirements in order to achieve LEED Certification.

#### **1. MUST COMPLY WITH ENVIRONMENTAL LAWS**

##### **New Construction, Core & Shell, Schools, Commercial Interiors:**

The *LEED project building or space*, all other *real property* within the *LEED project boundary*, and all *project work* must comply with applicable federal, state, and local building-related environmental laws and regulations in place where the project is located. This condition must be satisfied from the date of *LEED project registration* or the commencement of *schematic design*, whichever comes first, up and until the date that the building receives a *certifi-*

cate of occupancy or similar official indication that it is fit and ready for use.

**Existing Buildings: O&M:**

The LEED project building, all other real property within the LEED project boundary, any project work, and all *normal building operations* occurring within the LEED project building and the LEED project boundary must comply with applicable federal, state, and local building-related environmental laws and regulations in place where the project is located. This condition must be satisfied from the commencement of the LEED project's initial LEED-EB: O&M *performance period* through the expiration date of the LEED Certification.

**All Rating Systems:**

A lapse in a project's compliance with a building-related environmental law or regulation that results from an unforeseen and unavoidable circumstance shall not necessarily result in non-compliance with this MPR. Such lapses shall be excused so long as they are remediated as soon as feasibly possible.

2. MUST BE A COMPLETE, PERMANENT BUILDING OR SPACE

**All Rating Systems:**

All LEED projects must be designed for, constructed on, and operated on a permanent location on already existing *land*. LEED projects shall not consist of mobile structures, equipment, or vehicles. No building or space that is designed to move at any point in its lifetime may pursue LEED Certification.

**New Construction, Core & Shell, Schools:**

LEED projects must include the new, ground-up design and construction, or *major renovation*, of at least one commercial, institutional, or high-rise residential building in its *entirety*.

**Commercial Interiors:**

The LEED project scope must include a *complete*

*interior space* distinct from other spaces within the same building with regards to at least one of the following characteristics: ownership, management, lease, or party wall separation.

**Existing Buildings: O&M:**

LEED projects must include at least one existing commercial, institutional, or high-rise residential building in its entirety.

3. MUST USE A REASONABLE SITE BOUNDARY

**New Construction, Core and Shell, Schools,  
Existing Buildings: O&M:**

1. The LEED project boundary must include all contiguous land that is associated with and supports normal building operations for the LEED project building, including all land that was or will be disturbed for the purpose of *undertaking the LEED project*.

2. The LEED project boundary may not include land that is owned by a party other than that which owns the LEED project unless that land is associated with and supports normal building operations for the LEED project building.

3. LEED projects located on a campus must have project boundaries such that if all the buildings on campus become LEED certified, then 100% of the gross land area on the campus would be included within a LEED boundary. If this requirement is in conflict with MPR #7, Must Comply with Minimum Building Area to Site Area Ratio, then MPR #7 will take precedence.

4. Any given parcel of real property may only be attributed to a single LEED project building.

5. *Gerrymandering* of a LEED project boundary is prohibited: the boundary may not unreasonably exclude sections of land to create boundaries in unreasonable shapes for the sole purpose of complying with prerequisites or credits.

**Commercial Interiors**

If any land was or will be disturbed for the purpose of

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undertaking the LEED project, then that land must be included within the LEED project boundary.

### 4. MUST COMPLY WITH MINIMUM FLOOR AREA REQUIREMENTS

#### **New Construction, Core and Shell, Schools, Existing Buildings: O&M**

The LEED project must include a minimum of 1,000 square feet (93 square meters) of gross floor area.

#### **Commercial Interiors**

The LEED project must include a minimum of 250 square feet (22 square meters) of gross floor area.

### 5. MUST COMPLY WITH MINIMUM OCCUPANCY RATES

#### **New Construction, Core & Shell, Schools, and Commercial Interiors:**

##### *Full Time Equivalent Occupancy*

The LEED project must serve 1 or more *Full Time Equivalent* (FTE) occupant(s), calculated as an annual average in order to use LEED in its entirety. If the project serves less than 1 annualized FTE, optional credits from the Indoor Environmental Quality category may not be earned (the prerequisites must still be earned).

#### **Existing Buildings: O&M:**

##### *Full Time Equivalent Occupancy*

The LEED project must serve 1 or more Full Time Equivalent (FTE) occupant(s), calculated as an annual average in order to use LEED in its entirety. If the project serves less than 1 annualized FTE, optional credits from the Indoor Environmental Quality category may not be earned (the prerequisites must still be earned).

##### *Minimum Occupancy Rate*

The LEED project must be in a state of *typical physical occupancy*, and all building systems must be operating at

a capacity necessary to serve the current occupants, for a period that includes all performance periods as well as at least the 12 continuous months immediately preceding the first submission for a review.

**6. MUST COMMIT TO SHARING WHOLE-BUILDING ENERGY AND WATER USAGE DATA**

All certified projects must commit to sharing with USGBC and/or GBCI all available actual whole-project energy and water usage data for a period of at least 5 years. This period starts on the date that the LEED project begins typical physical occupancy if certifying under New Construction, Core & Shell, Schools, or Commercial Interiors, or the date that the building is awarded certification if certifying under Existing Buildings: Operations & Maintenance. Sharing this data includes supplying information on a regular basis in a free, accessible, and secure online tool or, if necessary, taking any action to authorize the collection of information directly from service or utility providers. This commitment must carry forward if the building or space changes ownership or lessee.

**7. MUST COMPLY WITH A MINIMUM BUILDING AREA TO SITE AREA RATIO**

The gross floor area of the LEED project building must be no less than 2% of the gross land area within the LEED project boundary.

**LEED 2009 MPR SUPPLEMENTAL GUIDANCE**

**Version 1.0**

**November 2009**

**§ 10:1 Introduction**

The LEED 2009 MPR Supplemental Guidance was written to help project teams understand how their buildings and their spaces can meet the Minimum Program Requirements (MPRs). This document builds on the MPRs by establishing exceptions, providing direction for specific situation, defining key terms, and describing the intent behind each MPR. This Supplemental Guidance is the

dynamic partner of the MPRs: it will evolve over time to respond to a changing and complex industry while the requirements themselves will remain the same.

#### ABOUT THE MPRS

The MPRs list the basic characteristics that a project must possess to be eligible for certification under the LEED 2009 rating systems, therefore defining a broad category of buildings that the LEED 2009 rating systems were designed to evaluate. They were developed over a period of nine months by USGBC staff and committee members, and were officially approved in April, 2009 by the LEED Steering Committee (LSC). In November 2009, the LSC and the USGBC Executive Committee approved of additional MPR language that clarified, but did not add to, the existing requirements. When new rating system versions become available, the MPRs will be completely revised and re-approved. Please find the MPRs at the following locations:

- stated throughout this document
- condensed for all rating systems here:  
<http://www.usgbc.org/DisplayPage.aspx?CMSPageID=2014>

#### APPLICABLE RATING SYSTEMS

Projects registering under the following rating systems, including those that upgrade from past versions, are subject to the MPRs: New Construction and Major Renovations 2009 (NC), Core & Shell 2009 (CS), Schools 2009, Commercial Interiors 2009 (CI), and Existing Buildings: Operations 2009 (EB: O&M). *The MPRs do NOT apply to LEED for Homes, LEED for Neighborhood Development, rating systems that have not yet launched, and pre-2009 rating systems.*

#### VERSIONS OF THIS DOCUMENT

This document will be regularly updated as necessary to provide additional clarification on the intent and application of the MPRs. All changes and additions will be clearly communicated as highlighted text within each new version. Retired versions will be archived and permanently accessible.

Projects must comply with the version of this document

## § 10:1 HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

that is current at the time of the project's registration. It is the responsibility of the project team to be familiar with the current version when registering a project. Versions published after a LEED project's registration may be referenced by project teams for additional clarifications, if desired.

### SUBMITTING QUESTIONS ABOUT THE MPRS

The process for submitting alternative compliance or interpretation requests regarding MPRS is still under development. This process and fees related thereto will be described in a later version of this document. All general inquiries relative to the MPRS should be sent to GBCI from this website: <http://www.gbcj.org/customerserv.aspx>.

### IF MPR COMPLIANCE IS IN QUESTION

If it becomes known that a LEED project is or was in violation of an MPR, certification may be revoked, or the certification process may be halted. These situations will be handled on a case by case basis according to GBCI's challenge policy.

### UNUSUAL BUILDING TYPES

Some buildings have characteristics that are not specifically prohibited by the MPRS, but nonetheless make them unsuitable for evaluation under the LEED rating systems. If a project team recognizes that their building has such a characteristic, they are encouraged to implement green building strategies but refrain from attempting LEED certification. The decision not to attempt certification is at the discretion of the project team only. In general, GBCI will not prevent a building or space from attempting LEED certification as a result of an unusual characteristic that is not addressed by the MPRS.

### PRECERTIFICATION AND RECERTIFICATION

Projects pre-certifying under LEED CS must meet the MPRS applicable to all LEED CS projects. Projects recertifying under LEED EB: O&M must meet the MPRS applicable to all LEED EB: O&M projects.

### RATING SYSTEM SELECTION

The MPRS, and this document, do not deal with rating

system selection, i.e., choosing the proper LEED rating system for a given project. Please find guidance on this topic in the introductions to each rating system and in the rating system selection wizard tool found in the registration process in LEED Online.

#### DOCUMENTING COMPLIANCE WITH THE MPRS

The LEED project owner must confirm that the project complies with each of the MPRs by completing checkboxes and an initial box in the Project Information form #1 in LEED Online v3. Unless there is a special circumstance, project teams are not required to submit additional documentation to prove compliance.

#### MULTIPLE BUILDINGS

With a few exceptions, this document excludes guidance specific to multiple building projects. Such guidance is under development and will be included in a later version of this document.

Please find underlined terms in the definitions section at the end of this document.

### § 10:2 Must comply with environmental laws

#### MPR Language

##### All Rating Systems:

A lapse in a project's compliance with a building-related environmental law or regulation that results from an unforeseen and unavoidable circumstance shall not necessarily result in non-compliance with this MPR. Such lapses shall be excused so long as they are remediated as soon as feasibly possible.

##### New Construction, Core & Shell, Schools, Commercial Interiors:

The *LEED project building or space*, all other *real property* within the *LEED project boundary*, and all *project work* must comply with applicable federal, state, and local building-related environmental laws and regulations in place where the project is located. This condition must be satisfied from the date of *LEED project registration* or the commencement of *schematic design*, whichever comes first,

up to and until the date that the building receives a *certificate of occupancy* or similar official indication that it is fit and ready for use.

**Existing Buildings: O&M:**

The LEED project building, all other real property within the LEED project boundary, any project work, and all *normal building operations* occurring within the LEED project building and the LEED project boundary must comply with applicable federal, state, and local building-related environmental laws and regulations in place where the project is located. This condition must be satisfied from the commencement of the LEED project's initial LEED-EB: O&M *performance period* through the expiration date of the LEED Certification.

**Intent:**

The purpose of this MPR is to highlight the importance of environmental laws and regulations that apply to LEED projects. While all building projects ought to comply with all legal requirements, as the LEED rating systems are standards for excellence in green building, it is appropriate and logical to specifically require LEED certified buildings to comply with applicable environmental laws and regulations. Such legislation establishes a baseline standard for sustainability.

**THIS MPR DOES NOT INTEND TO:**

- align LEED, USGBC, or GBCI with any form of government
- give USGBC/GBCI the opportunity to penalize project teams or building owners for unintended, short term, minor offenses
- extend to environmental laws that are not related to the design, construction, and operation of a LEED project building
- force project teams to make extensive and unnecessary effort to verify compliance with environmental building laws

**Specific Allowed Exceptions:**

- *Short-term lapse*

As stated in the MPR, a lapse in a building's compliance with an environmental law that results from unforeseen

and unavoidable circumstances will not be considered as a basis for revocation of LEED certification. However, the LEED project team must demonstrate a dedicated effort to return the building to compliance as soon as feasibly possible. As a precaution and at the project team's discretion, the building owner may notify GBCI of any lapse in compliance and efforts to bring the building back into compliance. The MPR form under 'Project Information Forms' in LEED Online should be used for this purpose. If the lapse occurs after certification (applicable only to EB: O&M certified projects), the project team may contact GBCI through regular customer service at

<http://www.gbci.org/customerserv.aspx>.

- *Exemption granted by authorities*

If the project is granted an exemption from a building-related environmental law from governmental authorities for any reason, then that project is exempt from this MPR in regards to that particular law. In the event that this occurs, a description of the situation leading to the exemption and proof of the exemption (such as an official letter from the granting authority) must be provided in the MPR form under 'Project Information Forms' in LEED Online.

- *Special consideration for LEED for Commercial Interiors projects*

Only the gross floor area within the LEED project boundary of a LEED CI project must comply with this MPR, NOT the building that the project is located in.

- *Special consideration for LEED for Core and Shell projects*

For LEED-CS projects, interior fit-out work conducted by a tenant is NOT subject to this MPR unless strategies implemented in the fit-out space contribute to earned credits for that project via the tenant sales and lease agreement path. For the purposes of this exception, a tenant is considered an entity which is leasing space from the owner.

### **Additional Information and Clarification**

- *Applicable building-related environmental laws*

#### **DEFINITION**

For the purposes of this MPR, an 'environmental law' is

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considered to be a statute, rule, treaty, convention, executive order, regulation, or ordinance that seeks to protect the natural environment and/or human health which may be negatively impacted by activities surrounding the design, construction, development, and (for those using EB: O&M), operation of a building.

LOCATION

This MPR applies to ALL LEED projects, regardless of location, and includes all existing building-related environmental laws in the jurisdiction where the LEED project is located. For US projects, this includes laws at the federal, state, and local level.

CATEGORIES

Categories containing laws that fall under the purview of this MPR include, but are not limited to the following: wetlands, noise, runoff, asbestos, air quality, pollution, sewage, pesticides, safety, and forestry.

EXAMPLES

The following are examples of US federal building-related environmental laws and regulations that USGBC generally expects will fall under the purview of this MPR for most LEED projects. This list is not intended to be exhaustive, only illustrative: its purpose is to further orient project teams as to the meaning of this MPR and to assist project teams in determining which laws fall under the purview of this MPR. **It is the project team's responsibility to know which laws apply to the building and to verify that the project is in compliance.**

- Clean Water Act
- OSHA Safety and Health Regulations for Construction
- Endangered Species Act
- OSHA Recording and Reporting Occupational Injuries and Illness
- *New laws and regulations*

This MPR includes new laws, regulations, and ordinances as they are enacted.

- *Conflicts between LEED 2009 requirements and laws*  
In the rare case that an applicable building-related

environmental law covered by this MPR conflicts with an MPR, or a LEED prerequisite or credit, the law will take precedence. Project teams may still comply with the MPR and achieve the prerequisite or credit by submitting a Project CIR requesting approval of an alternative compliance path that satisfies both the law and the intent of the LEED requirement.

- *Law enforcement*

By verifying that a LEED project complies with this MPR, it is assumed that project owners are accurately and willingly attesting that the LEED project complies with applicable building-related environmental laws. LEED is a voluntary program that rewards exemplary building performance. In no way will USGBC or GBCI act as law enforcement. With this MPR, USGBC and GBCI are using established laws only to ascertain that the LEED project is meeting a minimum environmental standard.

- *MPR #1 and Sustainable Sites Credit 1 (SSc1) Site Selection in LEED NC, LEED CS, and LEED for Schools*

The intent and requirements of SSc1 differs from that of this MPR. This MPR requires compliance with the law, and SSc1 rewards voluntary land use choices. A point may be earned under SSc1 if the LEED project complies with a series of criteria. Projects that do not meet these criteria demonstrate unsustainable, but not illegal development practices. SSc1 essentially builds on the requirements of MPR #1.

- *Settlements*

It is recognized that, in the case of an alleged environmental law violation, building owners sometimes agree on a settlement with EPA or other governmental agency to make reparations for their actions. Guidance on how this MPR will be applied in such a situation is forthcoming. If you are in this situation and need to know if you are in compliance with this MPR, please contact GBCI through this website <http://www.gbci.org/customerserv.aspx>.

### **§ 10:3 Must be a complete, permanent building or space**

#### **MPR Language**

All Rating Systems:

§ 10:3 HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

All LEED projects must be designed for, constructed on, and operated on a permanent location on already existing *land*. LEED projects shall not consist of mobile structures, equipment, or vehicles. No building or space that is designed to move at any point in its lifetime may pursue LEED Certification.

New Construction. Core & Shell. Schools:

LEED projects must include the new, ground-up design and construction, or *major renovation*, of at least one commercial, institutional, or high-rise residential building in its *entirety*.

Commercial Interiors:

The LEED project scope must include a *complete interior space* distinct from other spaces within the same building with regards to at least one of the following characteristics: ownership, management, lease, or *party wall separation*.

Existing Buildings: O&M:

LEED projects must include at least one existing commercial, institutional, or high-rise residential building in its entirety.

**Intent:**

The LEED rating systems were designed to evaluate complete buildings and spaces in fixed locations. Partial buildings or spaces are unsuitable for LEED certification because, when analyzed under the requirements of LEED prerequisites and credits, they create results inconsistent with those of whole buildings or spaces. Also, partial certification can easily appear to encompass an entire building or space, sending a false message to users.

Permanency is an important requirement because a significant percentage of LEED prerequisites and credits are dependent on location, making a mobile building or space unacceptable. The stipulation for already existing land responds to the fact that artificial land masses displace and disrupt marine ecosystems. Buildings that generate the need to develop such land do not meet the overall intent of the LEED rating system. Anything less than a distinct, complete, and permanent project on existing land will not be able to accurately demonstrate compliance with LEED.

**THIS MPR DOES NOT INTEND TO:**

- exclude a building or space that could be fairly evaluated through the LEED certification process if the exclusion is based on a technicality
- exclude buildings with an unusual design or built through non-traditional means that could be fairly evaluated through the LEED certification process

**Specific Allowed Exceptions:**

- *Movable buildings and parts of buildings*

Prefabricated or modular structures and moveable building elements of any variation may be certified once permanently installed and/or established as part of the LEED project building in the location that they are intended to stay for the life of the complete structure.

- *Horizontally attached buildings (including additions)*

Horizontally attached buildings may be certified independently, provided that the following two conditions are met:

- a) they are physically distinct (see definition in Glossary)
- b) they have unique addresses or names.

If these conditions are not met, the structure is considered a single building and must be certified as such.

- *Vertically Attached Buildings*

Currently, structures that are vertically stacked are not recognized as distinct buildings that may apply separately to LEED. Buildings may only be distinguished if they are horizontally attached. However, an alteration to this rule that would allow some vertically stacked structures to certify separately is under consideration. There is no timeline for the release of this alteration. If you would like to certify a building that is built on top of or below another building please contact GBCI through this website <http://www.gbci.org/customerserv.aspx>.

- *Buildings constructed on top of or below underground public infrastructure*

Buildings vertically connected to, but physically distinct from public infrastructure such as a transportation hub, may be considered a building in its entirety and certified independently of the infrastructure.

- *Special consideration for LEED for Commercial Interiors projects*

#### MOBILITY

Buildings in which CI projects are located must be immobile, and are subject to the same guidance on the subject of permanency as projects that are certifying under whole building rating systems.

#### ALREADY EXISTING LAND

Buildings in which CI projects are located are NOT required to be built on already existing land.

- *Special Consideration for LEED for Core & Shell projects*

For a project certifying under CS, the project is considered a 'building in its entirety' without interior fit-outs complete

- *Artificial land mass or support structures*

- Buildings located on previously constructed docks, piers, jetties, infill, and other manufactured structures in or above water or other bodies are permissible, provided that artificial land is previously developed, i.e., once supported hardscape or another building before the development of the LEED project.

- Buildings cantilevered over water, highways, or other bodies are acceptable.

- Existing land to which soil or other material has been added is acceptable.

- *Multi-tenant buildings certifying under LEED EB: O&M*

Multi-tenant buildings certifying under LEED EB: O&M may exclude up to 10% of the gross floor area from some prerequisites and credits as outlined in the LEED EB: O&M reference guide and the submittal forms in LEED Online.

- *Floor separation may be used to define a complete interior space*

Ownership, management, lease, and party walls are listed in the MPR as acceptable methods for defining

complete interior spaces for LEED-CI. Floors and ceilings, i.e. the structural component separating two floors, may also define two complete interior spaces if one floor is unaffected by construction work, even if both floors serve the same occupant.

● *Owner-occupied buildings and CI: Certifying space not separate by ownership, management, lease, party wall, or floor*

There are many situations in which a single entity owns, manages, and occupies an entire building, and wishes to certify a renovated portion of the building which is not separate from other portions by a party wall or floor. For example, a single floor in an academic building might be divided into labs and offices, and only the labs undergo a renovation. Such a space is not automatically disqualified from attempting to certify under LEED CI. Project teams with this situation must submit a narrative in Project Information Form #1 in LEED Online v3 confirming that the conditions below are met.

a) It is unreasonable or impossible to draw a project boundary where there is separation by ownership, management, lease, or party wall separation.

b) The LEED project boundary is not drawn in such a way as to specifically avoid floor area that would not comply with other MPRs, prerequisites, or attempted credits.

c) The LEED project boundary is drawn at a clear functional and physical barrier such that the LEED certification, if awarded, could not easily be perceived to extend to uncertified floor area.

d) The LEED project boundary is not drawn in such a way as to create an unreasonably difficult review process that results from the reviewer's inability to distinguish between strategies, services, or materials in the LEED certifying space and the non-LEED certifying space. For example, it would be best if the LEED project boundary coincided with an HVAC zone boundary.

e) If the project is on multiple floors, the renovation or fit-out work is conducted under a single construction contract and signage will be used to clearly indicate which floors/space is LEED certified. The floors need not be adjacent.

### **Additional Information and Clarification**

- *Movable buildings*

- Structures not compliant with this MPR include cars, motor homes, trains, boats, ships, planes, and transient exhibits of any kind.

- If, for any reason, a LEED 2009 certified building is moved from the location cited at the time of LEED certification, it will no longer be in compliance with this MPR.

- *Certifying buildings with movable parts*

Buildings with large movable parts, such as a retracting ceiling in a stadium, are acceptable.

- *Certifying temporary buildings*

The amount of time that a building or space is intended to remain standing does not affect compliance with this MPR.

- *Multi-party ownership*

Multiple-party ownership of a certifying building or space is acceptable. Proper accountability for MPR and rating system conformance must be in place.

- *Building types*

The categories of buildings suitable for LEED — commercial, institutional, and high rise residential are intentionally inclusive, and are in no way exclusive. They cover a wide range of building types, including industrial. GBCI will not prevent a building from attempting certification due to its use. However, building use may restrict project teams to one rating system or another. For example, single family homes are restricted to LEED for Homes. Information on rating system selection can be found in the introduction to each rating system and the wizard tool found in the registration process in LEED Online v3.

- *No exceptions for projects with EQp2 conflicts*

Some project buildings, such as casinos, typically have difficulty achieving LEED certification due to a smoking policy that conflicts with Indoor Environmental Quality prerequisite 2, Environmental Tobacco Smoke Control

(EQp2). There will be no exceptions to this MPR to allow for partial building certification of such buildings. Project teams are encouraged to carefully review option 2 in EQp2 to explore opportunities to achieve LEED certification despite a smoking room located within a project.

#### § 10:4 Must use a reasonable site boundary

##### MPR Language

##### New Construction, Core and Shell, Schools, Existing Buildings: Operations and Maintenance

1. The *LEED project boundary* must include all contiguous land that is associated with and supports normal building operations for the LEED project building, including all land that was or will be disturbed for the purpose of *undertaking the LEED project*.

2. The LEED project boundary may not include land that is owned by a party other than that which owns the LEED project unless that land is associated with and supports normal building operations for the LEED project building.

3. LEED projects located on a campus must have project boundaries such that if all the buildings on campus become LEED certified, then 100% of the gross land area on the campus would be included within a LEED boundary. If this requirement is in conflict with MPR #7, Must Comply with Minimum Building Area to Site Area Ratio, then MPR #7 will take precedence.

4. Any given parcel of real property may only be attributed to a single LEED project building.

5. *Gerrymandering* of a LEED project boundary is prohibited: the boundary may not unreasonably exclude sections of land to create boundaries in unreasonable shapes for the sole purpose of complying with prerequisites or credits.

##### Commercial Interiors

If any land was or will be disturbed for the purpose of undertaking the LEED project, then that land must be included within the LEED project boundary.

##### **Intent:**

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In order to ensure fair and consistent evaluation for all projects under the Sustainable Sites credit category, it is necessary to have guidelines for an acceptable LEED project boundary. All site conditions and impacts related to a building must be considered and addressed in the certification process to ensure a complete and thorough examination of the environmental impact of a building.

**THIS MPR DOES NOT INTEND TO:**

- force project teams to create an awkward or misrepresentative LEED project boundary that does not reflect actual land use
- prevent project teams from making appropriate use of land to earn prerequisites and credits
- imply that land left outside of the LEED project boundary should not also benefit from environmentally sensitive land use practices.

**Specific Allowed Exceptions:**

- *Assigning real property for subsequent certification under EB: O&M*

**SINGLE BUILDING**

LEED projects certifying under EB: O&M may use some or all of the same real property that was used in the previous Design and Construction OR EB: O&M certification. The boundary does not need to be drawn in the same location — as long as the requirements of this MPR are met, the project team may re-draw the project line at their discretion.

**MULTIPLE BUILDINGS**

A single building previously certified as part of a multiple building LEED project may wish to pursue subsequent LEED certification under EB: O&M independently. Real property within the original collective boundary can be re-attributed to that single building for the EB: O&M certification.

- *Including non-contiguous parcels in the LEED project boundary*

Non-contiguous parcels of land may be included within the LEED project boundary if the conditions below are met.

a) Non-contiguous parcels must be separated by land that is owned and operated by an entity different than the owner of the land that the LEED project building sits on.

b) All parcels separate from the parcel that the LEED building sits on must directly support or be associated with normal building operations.

c) Non-contiguous parcels are no more than 1/4 mile (0.40 kilometer) walking distance apart.

d) There is a clear walking path between the parcels

e) All real property within the LEED project boundary, including the non-contiguous parcel(s), is subject to the requirements of all MPRs, prerequisites, and attempted credits. For example, two sets of storm water calculations would need to be provided for two separate parcels to demonstrate compliance with Sustainable Sites credit 6.

f) All land within the LEED project boundary must be governed by a common regulatory jurisdiction and is owned, leased, or managed by the same organizational entity.

g) A description of the non-contiguous parcels of land within the LEED project boundary, the land between them, and compliance with items (a) through (f) above must be provided in the Additional Details section of Project Information form #1 in LEED Online v3.

● *Land outside the LEED project boundary used for compliance with specific credits*

#### LEED — EB: O&M, SUSTAINABLE SITES CREDIT 5

Any off-site land used to earn this credit is not required to be included in the LEED project boundary, and therefore is not subject to consideration for prerequisite, other credit, or other MPR compliance EXCEPT MPR#7.

#### ALL RATING SYSTEMS: STORM WATER DESIGN CREDITS

The nature of storm water calculations often necessitates that land outside the LEED project boundary be considered when determining compliance for these credits. Also, it may be necessary to discharge site runoff to a regional or master stormwater management system, such as a retention pond. This additional real property does not

need to be included in the LEED project boundary or be considered for prerequisite, other credit, or other MPR compliance.

- *Facilities (including parking) outside the LEED project boundary used for compliance with specific credits*

Facilities (including parking) that are not within the LEED project boundary but are used to demonstrate compliance with a credit or prerequisite, as allowed per the rating system and reference guide, need not be considered for other prerequisite, credit, or MPR compliance. However, those facilities cannot be used to show compliance for other LEED projects, unless the sufficient capacity is present.

- ◆ **EXAMPLE** Off-site showers used to show compliance with Sustainable Sites credit 4.2, Alternative Transportation, Bicycle Storage and Changing Rooms in LEED NC need not be included in the calculations for Water Efficiency prerequisite 1, and cannot be used to earn this credit for an additional LEED project unless the required shower to-FTE ratio is met for both projects.

- *Real property no longer attributed to a certified building*

If a certified building is demolished, all real property attributed to that LEED project may be assigned to another LEED project.

- *Easements and leases*

Land that the LEED project owner leases or has an easement on may be included within the LEED project boundary.

- *Shared construction sites*

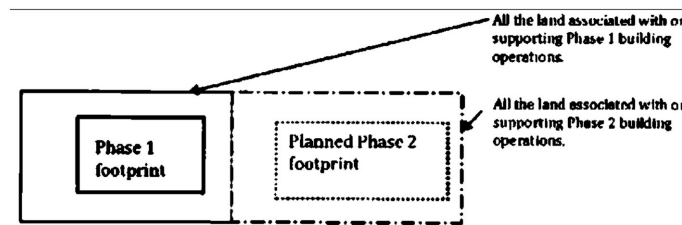
A LEED project boundary must include all land disturbed for that project's construction, regardless of overlapping construction activity for other projects. For information on overlapping LEED project boundaries, please see the bullet below entitled 'Site boundary guidance for phased building projects, or building on land that was designated for a previously certified LEED project'.

- *Site boundary guidance for phased building projects, or building on land that was designated for a previously certified LEED project*

Project teams with phased building projects often wish to certify each phase as it is completed.

Phased building projects are either 1) buildings with planned future additions or 2) sites with a master plan for multiple buildings. If a phased project falls into the first category, the bullet entitled 'Horizontally Attached Buildings', in the MPR #2 section, must be consulted for information on whether or not the different phases are permitted to certify separately.

Phased projects with multiple buildings will often be able to easily designate a LEED project boundary (LPB) for each building, such as in this example:

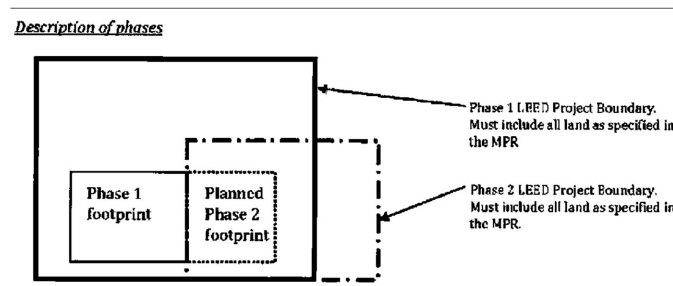


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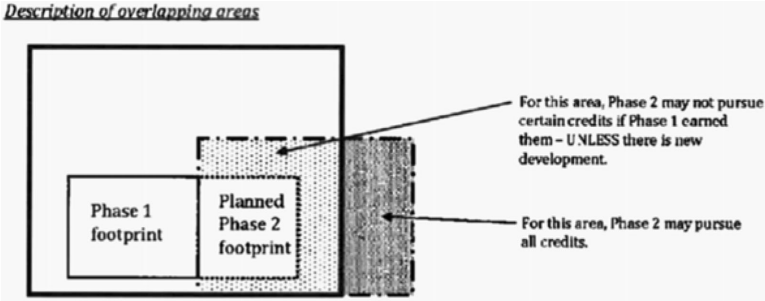
For projects with multiple phases of the same building, or a building located on land that is a part of an already certified LEED project, overlapping LEED project boundaries is inevitable. An exception to the fourth stipulation in this MPR — “Any given parcel of real property may only be attributed to a single LEED project building” — may be made in this situation if certain criteria are met. **Note that the purpose of this exception is to protect the integrity of certified LEED projects while allowing the future projects to successfully pursue LEED certification.** Please see below an illustration of what is required and allowable in this situation, with corresponding written guidance on the next page.

EXAMPLE: JONES ELEMENTARY SCHOOL, USING THE LEED FOR SCHOOLS 2009 RATING SYSTEM

*Description of phases*

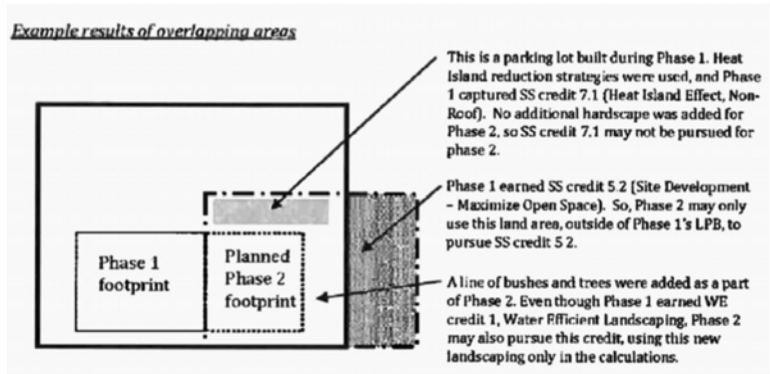


Description of overlapping areas



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*Example results of overlapping areas*



**LEED PROJECT BOUNDARY GUIDELINES FOR THE FIRST PHASE**

The first building in a phased building project must include all land as required by this MPR. Land designated for a future building may not be excluded.

**LEED PROJECT BOUNDARY GUIDELINES FOR SUBSEQUENT PHASES**

A subsequent building in a phased building project must include/exclude land as required by this MPR with the exception of the fourth stipulation: 'Any given parcel of real property may only be attributed to a single LEED project building.' This exception may be made if the following conditions are met.

a) Information on previous project must be disclosed. The project team must inform the LEED reviewer when they are developing on land belonging to a previously certified LEED project. The name, LEED project number, LEED project boundary, and list of credits earned must be disclosed. This information may be disclosed in Project Information Form #1 in LEED Online v3.

b) Land necessary to earned SS credit 5.1 or 5.2 for a previous project must not be displaced. A subsequent building phase located on land that is part of a certified LEED project MAY NOT displace land that is critical to a previous phase's compliance with SS credit 5.1 or 5.2. The Phase 1 project team must take into consideration future phases when applying for SS credit 5.1 and 5.2. If unforeseen circumstances result in an infringement on this policy, the project team must submit a Project CIR to request consideration for an alternative solution that satisfies the intent of SS credit 5.1 and 5.2.

c) Credits are not double counted. Overlapped LEED project boundaries restrict project teams' ability to pursue certain credits, as detailed below.

*SS credit 3, Brownfield Redevelopment:* The same brownfield redevelopment effort can contribute to capturing this credit for only one LEED project.

*SS credit 5.1, Site Development — Protect or Restore Habitat:* Land area that contributed to an earlier LEED project's capture of this credit via Case 2 (Previously Developed Areas or Graded Sites), may not be used by a later project to capture the credit.

*SS credit 5.2, Site Development — Maximize Open Space:* Land area that contributed to an earlier LEED project's capture of this credit may not be used by a later project to capture the credit.

*SS credit 7.1, Heat Island Effect, Non-Roof:* Strategies that contributed to an earlier LEED project's capture of this credit may not be used by a later project. If there is new development during a later phase on the same land (such as new sidewalk), then strategies associated with that new feature may contribute to the capture of the credit for that phase.

*WE credit 1, Water Efficient Landscaping:* Strategies that contributed to an earlier LEED project's capture of this credit may not be used by a later project. If there is new development during a later phase on the same land (such as new shrubbery plantings), then strategies associated with that new feature may contribute to the capture of the credit for that phase.

*NOTE on SS prerequisite 2, Environmental Site Assessment:* The same documentation may be used to show compliance for multiple LEED projects.

### **Additional Information and Clarifications**

● *Defining land that is associated with and directly supports a building*

This MPR requires that 'The LEED project boundary must include all contiguous land that is associated with and supports normal building operations for the LEED project building . . .'. This includes land which is altered in any way as a result of the LEED project construction, and features enjoyed by building users, such as:

- hardscape, such as parking and sidewalks
- septic treatment equipment
- stormwater treatment equipment
- landscaping

Often, these features are shared with other nearby buildings. In this case, the project team must make a judgment and divide the land reasonably among the buildings. See guidance for shared hardscape and construction site situations below.

● *Shared hardscape and on-site parking facilities*

If a LEED project building shares use of a parking lot,

parking garage, or other amenity with another building, then those amenities must be allocated according to the percentage of use for each building. A brief description of the situation and any related calculations should be provided in Project Information form #1 in LEED Online v3. The project team must only show that the appropriate percentage of amenities is included within the boundary for their own project. It is also their responsibility to ascertain that they do not inappropriately cross boundaries with another LEED project.

◆ **EXAMPLE** Two neighboring stores are being constructed, and one is pursuing LEED certification. A new parking lot with fifty spaces will be shared by the two stores. The certifying store estimates that it will use twenty parking spaces on a regular basis to serve its employees and customers. Therefore, the project team must draw its LEED project boundary to include twenty spaces and forty percent of the supporting hardscape (driveways, sidewalks, etc).

● *Supporting infrastructure not owned by building owner*

Infrastructure supporting the LEED project building may be omitted from the LEED project boundary if it is not owned by the LEED project owner AND if it is not included in the scope of construction work for the LEED project. This omission must be done consistently throughout the submission.

● *Small buildings within the LEED project boundary*

Occasionally, there are small buildings physically close to the LEED project building, and associated with its normal building operations. Such a building may be included within the LEED project boundary and excluded from required compliance with MPRs, prerequisites, and credits (unless specifically addressed below) if the conditions listed below are met. Temporary structures erected for the purposes of supporting construction administration work and that will be removed at construction completion are not subject to this MPR and will not be required to certify.

a) The building must be ineligible to apply for LEED certification because it does not meet MPR #2, Must Be A Complete, Permanent Building or Space, MPR#4, Must

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Comply with Minimum Floor Area Requirements, or MPR #5 Must Comply with Minimum Occupancy Rates.

b) The building must comply with MPR #1, Must Comply with Environmental Laws

c) The building must comply with all Sustainable Sites prerequisites.

d) No credit may be claimed for strategies implemented in the building.

e) Only two such buildings may be included within the LEED project boundary.

**§ 10:5 Must comply with minimum floor area requirements**

**MPR Language**

New Construction, Core and Shell, Schools, Existing Buildings: Operations and Maintenance

The LEED project must include a minimum of 1,000 square feet (93 square meters) of gross floor area.

Commercial Interiors

The LEED project must include a minimum of 250 square feet (22 square meters) of gross floor area.

**Intent:**

The thresholds and calculations that make up the system of evaluation in LEED begin to break down and lose meaning once the building or space being evaluated reaches relatively diminutive proportions. A building or space that is too small would compromise the integrity of the LEED certification system.

THIS MPR DOES NOT INTEND TO:

- exclude small buildings and spaces for any reason other than that stated in the intent: simply that they cannot be fairly analyzed by the LEED rating system
- imply that small buildings and spaces do not also have an impact on the environment and their occupants, and therefore also have the opportunity to achieve green building excellence in their design and construction

**Specific Allowed Exceptions**

*None*

**Additional Information and Clarifications**

- Open air stadiums, kiosks, and similar building types

satisfy this MPR if the minimum required amount of gross floor area is met for some part of the structure. The definition of gross floor area must be carefully reviewed when considering such a building for compliance with this MPR. For example, many parking garage structures will not meet this definition if they are essentially large roofed-over areas, because such areas are not counted within the total gross floor area.

### § 10:6 Must comply with minimum occupancy rates

#### MPR Language

New Construction, Core & Shell, Schools, and Commercial Interiors:

##### *Full Time Equivalent Occupancy*

The LEED project must serve 1 or more *Full Time Equivalent* (FTE) occupant(s), calculated as an annual average in order to use LEED in its entirety. If the project serves less than 1 annualized FTE, optional credits from the Indoor Environmental Quality category may not be earned (the prerequisites must still be earned).

##### Existing Buildings: O&M:

##### *Full Time Equivalent Occupancy*

The LEED project must serve 1 or more Full Time Equivalent (FTE) occupant(s), calculated as an annual average in order to use LEED in its entirety. If the project serves less than 1 annualized FTE, optional credits from the Indoor Environmental Quality category may not be earned (the prerequisites must still be earned).

##### *Minimum Occupancy Rate*

The LEED project must be in a state of *typical physical occupancy*, and all building systems must be operating at a capacity necessary to serve the current occupants, for a period that includes all performance periods as well as at least the 12 continuous months immediately preceding the first submission for a review.

##### **Intent:**

Many credits and prerequisites throughout the LEED

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rating systems evaluate the impact of the LEED project building on the building users, particularly those in the Indoor Environmental Quality credit category. USGBC believes it is appropriate and necessary to require that a minimum number of people benefit from the strategies implemented in order to earn the credits.

In EB: O&M, compliance with many prerequisites and credits is evaluated based on actual usage patterns. Therefore, it is necessary to require that typical usage of the LEED project building is underway during the performance periods, so that accurate measurements can be taken.

THIS MPR DOES NOT INTEND TO:

- imply that buildings and spaces with a small amount of human traffic do not also have an impact the few occupants they do have, and therefore also have the opportunity to achieve green building excellence in their design and construction
- exclude buildings that experience fluctuations in occupancy

**Specific Allowed Exceptions**

MINIMUM OCCUPANCY RATE *APPLICABLE TO EBOM ONLY*

- *Unexpected and temporary decline in occupancy (applicable to EBOM only)*

If occupancy unexpectedly and temporarily falls below the required threshold within the period of time subject to this MPR,\* but still meets the requirement using a weighted average (as described below), the project team must submit a description of the situation as well as the measures they have taken to keep the reduced occupancy numbers from affecting the results for each prerequisite and credit that deals with occupancy. Explanations specific to a prerequisite or credit should be given in the optional section for that prerequisite or credit, and general descrip-

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[Section 10:6]

\*As stated in the MPR language, the period of time subject to this MPR includes at least the 12 continuous months immediately preceding the first submission for a review and all performance periods.

tions should be given in the MPR form under 'Project Information Forms' in LEED Online.

### **Additional Information and Clarifications**

#### **FULL TIME EQUIVALENT OCCUPANCY APPLICABLE TO ALL RATING SYSTEMS**

- *Calculation method for determining annual FTE (the calculation for determining weighted occupancy for EB: O&M is below)*

Although each building varies in regular occupancy, the purpose of setting the baseline annual FTE is to ensure sufficient occupancy to warrant awarding points in the EQ credit category.

Annual FTE is based on the average 40 hour work week, assuming 48 total work weeks in the year. Based on this assumption, one annual FTE is defined as one person spending eight hours a day for 240 days in the building, or 1920 hours annually. The calculation can be done by average FTE occupants per day, week, or month:

By day, must be greater than or equal to 240: (total occupant hours in an average day/8) × number of occupied days

By week, must be greater than or equal to 48: (total occupant hours in an average week/40) × number of occupied weeks

By month, must be greater than or equal to 12: (total occupant hours in an average month/160) × number of occupied months

- ◆ **EXAMPLE** A religious worship facility has an hour-long service once a week for a year, and an average of thirty people attends each service. The building stands empty the remainder of the time. The annual FTE calculation for this building is:

*(30 total occupant hours in an average day / 8) × 52 occupied days = 195*

So, the combined occupant hours result in the equivalent of one person spending 195 eight hour days in the facility. EQ credits may not be pursued. However, if it gains 10 new members, this MPR would be satisfied:

*40 total occupant hours in an average day / 8) × 52 occupied days = 260*

- Only occupant hours that the building intends and

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expects to accommodate under normal building operations shall be included in annual FTE calculations.

**MINIMUM OCCUPANCY RATE APPLICABLE TO EBOM ONLY**

● *Space types subject to this MPR*

Gross floor area that is designed to be regularly occupied should be the focus when determining compliance with this MPR.

Any common space such as a lobby or bathroom that receives any use as well as any space that does not typically have occupants (such as closets or mechanical rooms) counts toward compliance with this MPR. Common space that is not receiving any use — for example, a bathroom on a floor completely devoid of occupants — does not count toward compliance.

● *Determining typical physical occupancy*

The definition of typical physical occupancy is ‘The state in which normal building operations are underway and the building is in use by the average number of full time equivalent occupants for which it was designed.’

To determine the average number of full time equivalent occupants the building was designed for, project teams must assess buildings on a case by case basis, using reasonable judgment. Design intentions, floor area capacity, and building system capacity must all be considered. Atypical or indeterminate cases must be described in the Project Information forms #1 in LEED Online v3.

All buildings except for hotels are considered to be in compliance with this MPR if more than 50% of its floor area is fully occupied (i.e., in a state of typical physical occupancy), as time-averaged over the performance period for all prerequisites and attempted credits, including the 12 months leading up to the initial submittal of application for review. The threshold for hotels is 55%.

Any building that experiences occupancy of less than 100% during a performance period should refer to the LEED EB: O&M Reduced Occupancy Guidance when completing submittal requirements. This document can be found here: <http://www.gbci.org/customerserv.aspx>.

◆ **EXAMPLE** A hotel has 100 equally sized rooms, and no common space aside from a small lobby. Since the hotel was built, sixty of the rooms have been full as an annual average, taking into account all seasons. Therefore, it is considered to be in compliance with this MPR because sixty exceeds the minimum threshold of 55%.

◆ **EXAMPLE** There is a school with nine equally sized classrooms, and circulation space equal to the square footage of one classroom. Four of the classrooms are not being used, but the other five are being fully used. Therefore, occupancy for the entire building is at 60%. If attendance in the three of the classrooms drops to 50% each, then occupancy for the entire building drops to 45%, and compliance with this MPR is in question.

- *Minimum Occupancy Rate Threshold Change*

In fall 2009, the minimum occupancy rate threshold for EB: O&M changed from the historic number 75% to the 55% and 50%, as detailed above. This change was as a result of a scrutiny of marketplace conditions, and was approved by the LEED Steering Committee (LSC). This threshold is not expected to change again in the foreseeable future. If and when it does change to become more stringent, the change will only apply to projects registered after the date the change is announced.

- *Calculation method for determining weighted occupancy (the calculation for determining annual FTE is in a separate section)*

A LEED project building experiencing fluctuating occupancy rates during the period of time subject to this MPR\* may utilize the following formula in determining compliance:

$$[(\text{number of days at } x\% \text{ capacity} * x\%) + (\text{number of days at } y\% \text{ capacity} * y\%) + (.)] / \text{total days in operation}$$

◆ **EXAMPLE** An office building with ten equally sized floors submits for preliminary review on January 1, exactly a year after its earliest performance period began. It is open 260 days a year. The building operated at full capacity for the first 150 work days of that year. Unexpectedly, six floors become vacant (occupancy

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drops to 40%) for 50 days. Then, those six floors become occupied again, each operating at half its capacity for the last 60 days (occupancy for the entire building rises to 60%).

$$[(150*1) + (50.*4) + (60.*6)] / 260 = 79\%$$

Because offices are required to be at 50% capacity at a minimum, this building is in compliance with this MPR.

\* As stated in the MPR language, the period of time subject to this MPR includes at least the 12 continuous months immediately preceding the first submission for a review and all performance periods.

● *Project area is leased but not occupied*

Leased but unoccupied space does not comply with this MPR because it is not considered physically occupied.

**§ 10:7 Must allow usgbc access to whole-building energy and water usage data**

**MPR Language**

All certified projects must commit to sharing with USGBC and/or GBCI all available actual whole-project energy and water usage data for a period of at least 5 years. This period starts on the date that the LEED project begins typical physical occupancy if certifying under New Construction, Core & Shell, Schools, or Commercial Interiors, or the date that the building is awarded certification if certifying under Existing Buildings: Operations & Maintenance. Sharing this data includes supplying information on a regular basis in a free, accessible, and secure online tool or, if necessary, taking any action to authorize the collection of information directly from service or utility providers. This commitment must carry forward if the building or space changes ownership or lessee.

**Intent:**

The goal of decreased energy and water use consumption is a major component of LEED certification. Tracking actual building consumption and comparing it to the usage proposed in design cases, or tracked during a perfor-

mance period, is essential to the individual success of each LEED certified building and the ongoing evaluation and development of the LEED program.

By providing usage data, LEED project owners will not only be taking a very active part in advancing the green building movement, but they will also be provided feedback about the performance of their building in the context of comparable buildings. As well, buildings that achieve LEED certification in a Design and Construction rating system will be able to more easily pursue certification under LEED for Existing Buildings, Operations and Maintenance with readily available performance data.

Access to complete and accurate information on every LEED building project's performance allows the USGBC to aggregate individual building information and perform program evaluations on its efficacy such as average LEED energy and water savings relative to national and regional averages. Aggregate figures on carbon emissions, costs, and other environmental impacts associated with building energy usage are of significant interest to USGBC and GBCI as well as green building advocates, builders, owners, and operators. USGBC will use all building data to inform the continuous improvement of the LEED rating systems, develop related educational programming, identify key areas of needed research and present clear, unbiased results to the building community. Building performance feedback will be provided to LEED project owners based on the information by making comparisons to national or known comparable datasets.

**THIS MPR DOES NOT INTEND TO:**

- penalize project teams with buildings that do not perform as well as intended
- create insurmountable technical or legal barriers to registering a LEED project

**Specific Allowed Exceptions:**

- *Where whole project meters are cost-prohibitive or physically impractical to install*

Owners of LEED project buildings or spaces that do not have meters in place that measure energy and/or water usage for the entire LEED certified gross floor area will not be expected to supply energy and/or water usage data

unless and until such meters are installed. Many Commercial Interiors projects, higher education campuses, and military bases will fall into this category.

- *Sale, Assignment or other Transfer of Ownership*

To own a LEED certified project is to participate in the ongoing evolution of the green building movement. In that spirit, and in keeping with the intent of this MPR, the owner's commitment to provide whole-building energy and usage data is expected to carry forward to the next owner if all or part of a LEED certified project is sold, re-assigned or otherwise transferred. However, it is recognized that this may not always be possible, and GBCI will respect the realities of situations in which reasonable efforts to maintain the commitment are not successful. In this situation, the initial building owner will no longer be required to provide the data or access to the data.

#### **Additional Information and Clarifications**

- *Correlation of actual performance to design performance*

Data collection is for research purposes only, and project teams are required simply to share data, NOT to show that design cases submitted during certification were accurate. For projects in NC, CI, CS, and Schools, actual performance will usually vary from projected performance. This MPR addresses the act of data sharing, not the content of the data. (Note that projects certifying under LEED EB: O&M are required to submit performance data *during* the certification process, and this *does* affect if, and what level of certification will be achieved.)

- *Determining typical physical occupancy*

The definition of 'Typical Physical Occupancy', as given in the definitions section below, is: 'The state in which normal building operations are underway and the building is in use by the average number of people that it was designed for.'

To determine the average number of full time equivalent occupants that the building was designed for, project teams must assess buildings on a case by case basis, using reasonable judgment. Design intentions, floor area capacity, and building system capacity must all be considered.

Projects certifying under LEED for New Construction, Commercial Interiors, Core & Shell, and Schools must begin sharing data once 50% of the gross floor area meets the definition of typical physical occupancy.

- *Process of data collection*

The process of data collection as well as the specific data that will be collected is currently under development, and a more detailed description will be released as soon as it is available.

- *Reporting Results*

Analysis of the data will be made publicly available on a regular basis (schedule to be determined).

- *Facilitating certification under LEED for Existing Buildings: Operations & Maintenance*

All building performance data collected may be used to meet the submittal requirements of the EB: O&M application.

- *Core & Shell projects do not require special treatment*

Metering and data collection for Core & Shell projects does not differ from other projects. Data may be collected from spaces that the LEED project team did not fit out as part of their core and shell design and construction — this is normal and acceptable.

### **§ 10:8 Must comply with a minimum building area to site area ratio**

#### **MPR Language**

The *gross floor area* of the LEED project building must be no less than 2% of the gross land area within the LEED project boundary.

**Intent:**

Because LEED is a rating system for buildings, it is appropriate to restrict the amount of land associated with a LEED certified project. While it is recognized that large sections of real estate may be affected by human activity generated by a building as well as an owner's general land use decisions, this stipulation has been put into place to ensure that an overabundance of land associated with a

LEED certification does not occur and certain Sustainable Sites credits are awarded fairly.

THIS MPR DOES NOT INTEND TO:

- imply that land left outside of the LEED project boundary should not also benefit from the environmentally sensitive land use practices

### Specific Allowed Exceptions

*None*

### Additional Information and Clarifications

- *Calculation method for determining gross floor area to site area ratio*

$$[\text{Gross Floor Area (sf)} / \text{Site Area (sf)}] \times 100$$

- ◆ **EXAMPLE** A 4000 square foot building is located on a five acre (217,800 sq ft) site:

$$[4000 / 217,800] \times 100 = 1.8\%$$

This building must claim only 4.6 acres (200,000 sq ft) within its LEED project boundary to meet the 2% building area to site area minimum.

- There is no maximum building area to site area ratio.
- Site area (or, gross land area) includes all land within the LEED project boundary, including the footprint of the LEED project building.
- If a LEED project boundary must be adjusted in order to meet this MPR, the adjustment must be done such that the new boundary also complies with MPR #3, Must Use a Reasonable Site Boundary. If there is a conflict, this MPR takes precedence. In other words, the project team may eliminate land that is usually required by MPR #3 to be within the project boundary, in order to comply with this MPR. However, the elimination must be done in a reasonable fashion: the project team cannot remove land specifically because it would not comply with another MPR, prerequisite, or credit requirements.
- If there is not any land included within the LEED

project boundary (as will typically be the case with LEED CI projects), the project will be in compliance with this MPR by default.

- Off-site land used to earn Sustainable Sites credit 5 in EB: O&M must be included in the calculations for this MPR.

### § 10:9 Glossary

***Certificate of Occupancy:*** A document issued by a local authority indicating that premises comply with provisions of zoning, building ordinances, building code, and/or approved plans and specifications. This is often required before premises can be occupied and title transferred.

***Complete Interior Space:*** At a minimum, all the gross floor area within the exterior walls of a building that is within a single occupant's control and contains all building components altered as part of the LEED-certifying construction scope. Ownership, management, lease, and party walls are acceptable methods for defining two complete interior spaces. Floors/ceilings, i.e. the structural component separating two floors, may also define two complete spaces if one floor is unaffected by construction work, even if both floors serve the same occupant.

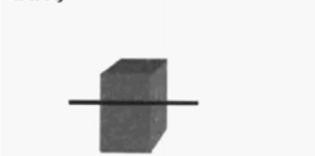
***Design and Construction Rating Systems:*** Any LEED rating system that addresses both the design and construction of a building or interior space. Includes LEED for New Construction and Major Renovation, LEED for Core & Shell, LEED for Schools, LEED for Commercial Interiors, LEED for Retail, and LEED for Healthcare.

***Entirety:*** The sum of the constructed components that make up a building which is physically distinct from another building. Must include all vertically attached components of the building.

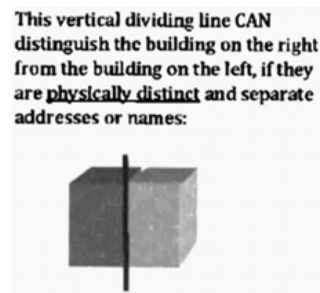
This horizontal dividing line CANNOT distinguish the top half of this structure from the bottom half as a building in its entirety:

§ 10:9 HANDBOOK FOR ARCHITECTS, ENGINEERS & CONTRACTORS

**This horizontal dividing line CANNOT distinguish the top half of this structure from the bottom half as a building in its entirety:**



This vertical dividing line CAN distinguish the building on the right from the building on the left, if they are physically distinct and separate addresses or names:



**Full Time Equivalent (FTE):** A regular building occupant who spends 40 hours per week in the building or space, or the equivalent. Part-time or overtime occupants have FTE values based on their hours per day.

**Gerrymander:** To divide and assign land in such a way as to give unfair, inconsistent representation to one parcel over another.

**Gross Floor Area:** (based on ASHRAE definition) Sum of the floor areas of the spaces within the building, including basements, mezzanine and intermediate-floored tiers, and penthouses with headroom height of 7.5 ft (2.2 meters) or greater. Measurements must be taken from the exterior faces of exterior walls OR from the centerline of walls separating buildings, OR (for LEED CI certifying spaces) from the centerline of walls separating spaces. Excludes non-enclosed (or non-enclosable) roofed-over areas such as exterior covered walkways, porches, terraces or steps, roof overhangs, and similar features. Excludes air shafts, pipe trenches, and chimneys.

**Gross Square Feet/Square Meters:** see 'Gross floor area'.

**Normal Building Operations:** The complete activities and functions intended to take place within the building and on associated property.

**Land:** Any part of the earth's surface not covered by a body of water.

**LEED Project:** All real property within the LEED project boundary, including the building(s) or space(s), all structures, land, etc. which collectively is attempting or has earned certification.

**LEED Project Boundary:** The line drawn on a site plan submitted to GBCI indicating the limits of the real property for which the project team is attempting or has earned certification.

**LEED Project Building:** The structure which is attempting or has earned certification.

**LEED Project Space:** The gross floor area which is attempting or has earned certification.

**LEED Project Registration:** The process through which the project team establishes a LEED project in LEED Online. This process is considered complete once payment is received by USGBC and/or GBCI.

**Major Renovation:** Construction work that is extensive enough such that normal building operations cannot be performed while the work is in progress, and/or a new certificate of occupancy is required.

**Operational Activities:** See 'Normal Building Operations'.

**Party Wall:** A wall without openings erected as a common support to structures on both sides.

**Performance Period:** The continuous, unbroken time during which sustainable operations performance for a building and/or site is being measured.

**Physically Distinct:** The condition in which a building has both of the following:

- a) exterior walls that are party walls or are separate from adjoining buildings by air space
- b) lighting, HVAC, plumbing, and other mechanical systems that are separate from the systems of adjoining buildings.

LEED project boundary lines that "slice" through party walls must not pass through any mechanical, electrical and plumbing (MEP) service infrastructure. Exceptions include buildings served by a common or shared chiller plant or heating water, or steam supply pipes (i.e., not air ducts), and only if the thermal energy serving the structure to be separated is sub-metered. *Note that the definition of 'physically distinct' has special implications for complicated retail and mixed use situations, and specific guidance on this issue will be provided upon the release of LEED for Retail. In the meantime, if this definition proves insufficient for a potential LEED project, GBCI should be contacted: <http://www.gbci.org/customerserv.aspx>.*

**Project Work:** See 'Undertaking the LEED Project'.

**Regularly occupied spaces:** Areas where workers are seated or standing as they work inside a building. In residential applications, these areas are all spaces except bathrooms, utility areas, and closets or other storage rooms. In schools, they are areas where students, teachers, or administrators are seated or standing as they work or study inside a building.

**Real Property:** Land and land alterations that are a direct result of human activities that subsequently support an active land use, including structures of any kind.

***Schematic Design:*** The initial phase of architectural work that establishes the scope and physical outline of the project.

***Substantial Completion of Construction:*** The point at which work on the building project is sufficiently complete in accordance with all construction contract documents, and any strategies that the project is receiving recognition for under LEED are fully implemented, except for operations-related strategies (such as a thermal comfort survey).

***Typical Physical Occupancy:*** The state in which normal building operations are underway and the building is being used by the average number of full time equivalent occupants for which it was designed.

***Undertaking the LEED Project:*** All design, construction, and development work that contribute to the creation of the LEED project building.

There are some ways to minimize risk for the property owner. Documents are now taking on tinges of green. For all sustainable building-related agreements (including but not limited to, development agreements, loan documents, leases, property management agreements, service agreements, professional agreements, and insurance policies) the next iterations will need to include specific references to sustainable building policies and requirements and apportion risk among the parties relating to those agreements for them to be worthwhile. Practitioners will need to be cognizant of these issues and plan accordingly in their drafting.

Up until now, all the players in the conventional building world have contracted with each other for fairly typical and customary projects. But now, with an extra element in design and construction we have to all think about the **GREEN LAYER** which takes a run-of-the mill project that engineers, architects, contractors used to be able to do in their sleep and make it one that requires careful attention to detail and added risks.

As an example of what can go wrong without proper drafting, let's take a fairly typical hypothetical. Let's say we have a property owner who we'll call Property Owner. And let's say we have a contractor called Contractor. Property Owner hires Contractor to retrofit one of its buildings

with energy star equipment. The intent is to reduce energy consumption and to save the related costs. It is also good PR for Property Owner because they are “greening” all of their buildings. A secondary reason to upgrade the equipment is governmental regulations that will require benchmarking energy consumption, reporting and monitoring the same, and a mandatory reduction in energy usage.

Based on Manufacturer’s specifications that the equipment would be much more energy efficient with a higher energy star rating than the equipment being replaced, the engineer specified the appropriate equipment and Contractor installed them. It was a \$4,000,000 project. After each of the units were in place and turned on, they sounded great. However, three months after installation of the last unit, the property’s electrical bill showed, instead of a decrease from the same period for the prior year, there was an increase. Who do you think will be sued by the property owner?

Well, the first answer is EVERYONE. The manufacturer will be sued for breach of its promised specifications, the engineer will be for negligence in recommending a product that did not live up to promised expectations, the Contractor will for failure to install the equipment properly and all will assert a defense that Property Owner did not operate the equipment appropriately and that was the reason for poor equipment performance. And the lawsuit from Property Owner for breach of contract is only the beginning. There are consequential damages Property Owner will try to claim from everyone. Why? They have a tenant which rents 1/3 of the building who signed a 15-year lease for an green energy-efficient building and because of the failure to reduce energy costs, the tenant has a right of termination in its lease. Similarly, Property Owner alleges that they purchased the equipment to comply with local municipal energy reduction requirements and now faces city sanctions for an increase in energy consumption. At this point we can easily see the liability picture. But how could the liability and risk factor have been ameliorated?

How does LEED v 3.0 increase the liability factor for property owners of certified buildings? We need to recognize that getting green is only part of the problem. Too

many in the green building world think the finish line is getting green or in the case of LEED, certified. Until now, we all focused on a building ground-up construction or major retrofit that was earmarked for LEED certification for the certification brass ring. But this is no longer true. Everyone involved in the green building world is responsible for a property to stay green. But it all depends on the contracts they execute as to who will ultimately bear the burden of risk.

New Challenges, New Responsibilities. Our focus must now be on not only the contracts that got us green (or in the case of USGBC, certified), but also those agreements that keep the buildings green. An examination of some basic agreements helps in this discussion.

A. Owner/Contractor agreements. The Owner/Contractor form agreements printed by the American Institute of Architects (“AIA”), as revised in 2007, do not yet have the contractor address sustainable building practices. This is a problem as when a property owner wants to retrofit her building, this contract does not even speak to sustainability. For her, a practitioner will need to incorporate sustainable provisions into this document.

B. Owner/Architect/Engineer. The AIA B101 form contract which was the first step in connecting the dots for the owner and its architect to the world of sustainability, did not do more than have the architect “encourage” the developer to consider sustainable building design and building systems. The AIA B-214 went the next step by providing for the architect to work with the owner and contractor to help deliver a LEED certified project and this form is devoted entirely to LEED. This agreement is actually very useful for the property owner who is in the world of V3.0 and this is true whether they are pursuing a new certification, a renewal or in fact an upgrade.

C. There are other very green contracts between property owner and third-party consultants, such as LEED Accredited Professionals, which will also assist in the LEED 2009 framework.

D. But there are other agreements which for the property owner dealing with LEED v 3.0 will be paramount. The Owner/Service Provider (janitorial maintenance contracts, water metering, energy provider, energy meter-

ing, property manager, etc.) contracts will have a pivotal role in minimizing risk for the property owner. These contracts which were once devoid of any sustainable-language now have such provisions incorporated in them (either in part of the agreement, or throughout its body). To give you an idea of what is cropping up in property management agreements, see the following “green provision” used in a New York City Property Management Agreement:

“Section X.XX Maintenance and Repair of Property.

(a) Manager shall, as an expense of the Property and consistent with approved budgetary guidelines, maintain the buildings, appurtenances and common areas of the Property in good condition according to the Technical Standards for Multifamily Building Operators as set forth by the Building Performance Institute, Inc. (“BPI”) and, in any event, in accordance with the standards and conditions reasonably specified by Owner from time to time. Maintenance and repair items shall include but shall not be limited to, interior and exterior cleaning and sanitation services in conformance with LEED v3.0 standards, exterior grounds and landscaping services, repairs and alterations to existing improvements shall similarly comport with LEED certification standards for the Property, water and energy use evaluation, plumbing, parking areas, electrical systems, painting, carpentry, preventive and regular maintenance and repair of mechanical systems and upgrades shall be performed with the most current requirements of the LEED Rating system in which the Property is certified. Manager agrees to review periodically with Owner all expenses and any reserves therefore, and other services rendered in connection with the Property.

(b) Manager shall operate the Property in accordance with the Energy Reduction Plan (“EPP”) in place at the commencement of the Management Term and defined by the New York State Energy Resource and Development Authority (“NYSERDA”) under the terms of the Property’s participation in NYSERDA’S Multifamily Performance Program. Manager shall also use reasonable efforts to coordinate with Owner’s designated commissioning agents to ensure the Property’s Performance Target as defined by NYSERDA and same shall take priority in all maintenance efforts and shall be directly overseen by Certified Personnel as defined in Section X.XX of this Agreement.”

E. The Green Lease, which was discussed earlier, now has a pivotal role in sustainable buildings continuing

compliance with LEED v 3.0 (primarily from a maintenance/commissioning point of view). Here it is interesting to note which party directs the greening and why, whether it be the tenant or the landlord. Negotiation postures differ depending upon the nature of the transaction (new lease or renewal), size of tenant (large or not large), Green or Not Green (tenant or landlord) and how a mix of the above may determine the “green” effect taken on by a property and maintained by same. The green lease provisions in a green landlord building may include: Negative Use covenants (for tenant “not to use or operate the Premises in any manner that will cause the Building or any part thereof not to conform with LL’s sustainability practices or the certification of the Building”, operating expense sub-provisions which may require any system replacements to be with Energy Star equipment, recommissioning for recertification and meeting reporting, maintenance and managing requirements for the applicable rating system of a building or the local municipality regulations.

Other lease provisions such as landlord sustainable building practices are devoted to expansive policies. The services and utilities section of a lease now may provide for purchase of green or renewable energy. Also, cleaning by LL done during the day instead of at night (which often wastes electricity by having lights on primarily for the cleaning crew has been addressed. In the alterations section, now all tenant improvements will have to be performed in conformance with any rating system for the Building and have tenant affirmative obligations that the tenant will engage a 3rd party LEED or Green Globe Accredited Professional to review plans, material procurement, demolition, construction, waste management, etc.

Another hot button for tenants is the restoration provision. Here the changes are seen by requiring the tenant at the expiration or earlier termination of the lease to dispose of its alterations, fixtures and furniture in an environmentally friendly manner and to salvage, recycle or reuse such materials in accordance with landlord’s sustainability practices. Reporting requirements are also included. Where landlord consent is required, this is another greening portion of the lease.

In some leases there are no explicit restrictions against

assignments or sublets to tenants whose use or operation of the Premises would cause the Building or any part thereof not to conform with the green building clauses in the lease. Similarly, with building recycling and waste management policies, failure to comply with these rules would constitute a default under the lease. The easiest catch-all for a green landlord to promulgate sustainable features into its leases is through its Building Rules and Regulations where it is quite easy to prohibit items such as space heaters due to their excess energy consumption. The rules and regulations section also often has the tenant acknowledgment of LL's sustainability practices and compliance therewith. Lastly, the Contractor Rules and Regulations exhibit to the lease contains many additional sustainability requirements set forth by the landlord.

Yet owner/contractor or owner/architect agreements, property management agreements, janitorial service company agreements are not the only contracts that are turning green to help keep the property owner in LEED compliance and the property owners must take care that they provide for other protections. For example, many green insurance endorsements have cropped up in the insurance world and it is here that the property owner is now able to minimize her risk even more. Marsh prints an annual brochure on the coverages now available for the sustainable building world. Environmental coverage now affords reductions in premiums for green buildings. There are also Property Coverages available where replacement to LEED certified properties is possible and it is with these insurance products that the property owner is given some protection.

Another area affected by sustainable buildings is with lending practices. Although it began with regional lenders, some major lenders have signed on to a "preferential lending practice" for green projects. The benefits could be anywhere from increased loan-to-value ratios to reduced interest rates. The change in economic landscape has helped green developers because lenders are now getting up to speed on green building practices and their numerous benefits (both to the bottom line in lower operating costs and higher occupancy rates, but also with reduced liability as recognized by the insurance industry). The loan documents of today are taking on the "green tinge" and as

time goes on, more and more lenders will require property owners to embrace sustainability. However, the benefit/burden analysis continues. If a developer neglects to obtain the lenders required LEED rating, it could be a default under the loan and the results for the developer could be disastrous.

Green building legislation — new laws and regulations are being promulgated all the time, revised, and further revised. Even New York City took the bull by the horns and in December its City Council adopted legislation that requires owners of buildings greater than 50,000 square feet to perform energy audits once every ten years and to conduct upgrades and detailed maintenance to building operations and maintenance systems which includes installing or replacing weather stripping and insulating steam pipes.

So though existing buildings are the key to the kingdom because the majority of building stock in the world is of existing buildings, this is where those project certified under prior versions face the greatest challenge. What was acceptable a few years ago under Version 2.2 will not be acceptable under Version 3.0 and the following iterations. How USGBC handles this is as yet unknown. And it is also in this area where litigation may play a role. But with LEED compliance, we are only sometimes half way there.

Governmental regulations will and already do require property owners to adopt sustainable building practices whether they like it or not or they will face penalties. And those penalties may include not only fines from the local jurisdiction, but also loss of a building's certification rating, an automatic default in a loan agreement, litigation with tenants over obligations that those tenant's never envisioned when their leases were executed, etc. In this case, the lease will probably be the principal document used by the Landlord to comply with the laws "greening requirements".

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